# Petition

81-996

Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

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DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,

Petitioners,

vs.

KENNETH C. FARE, in his capacity as Los Angeles County Chief Probation Officer; THE SUPERINTENDENT OF LOS ANGELES COUNTY CENTRAL JUVENILE HALL; PETER F. SCHABARUM, KENNETH HAHN, EDMUND E. EDELMAN, DEANE DANA, and MICHAEL ANTONOVICH, in their capacities as Supervisors of the County of Los Angeles,

Respondents.

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PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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## QUESTIONS PRESENTED

1. The petitioner class of male juveniles confined at Central Juvenile Hall in Los Angeles, California, had sought and secured relief in the District Court from conditions of over-crowding, systemic inadequate medical treatment, lack of access to toilets at night, and lack of shower privacy at the hall, which were found by the Court to violate the federal constitutional rights of the class and their rights under State law. Petitioners did not challenge the constitutionality of of any state statute, regulation or constitutional provision. The first question presented is whether the decision of the Ninth Circuit Court of Appeals requiring the District Court to abstain from ruling on the merits of petitioners' claim below

until petitioners first obtained a judgment on their state law claims in state court, inappropriately required petitioners to exhaust state remedies, contrary to this Court's holding in Monroe v. Pape, 365 U.S. 167 (1961).

2. The second question presented is whether the decision of the Court of Appeals requiring the district court to abstain from a ruling on the merits was an inappropriate application of the principles of abstention previously articulated by this Court in Railroad Commission of Texas v. Pullman, Co., 312 U.S. 496 (1946) and its progeny, given that petitioners did not challenge the constitutionality of any state law, the matter was fully tried on the merits, and respondents appealed on numerous substantive grounds, but not on abstention.

## LIST OF PARTIES BELOW

The parties to this proceeding in the United States Court of Appeals for the Ninth Circuit were:

1. Clarence Cabell, in his capacity as Los Angeles County Acting Chief Probation Officer;

2. John Sarchett, in his capacity of Superintendent of Los Angeles County Central Juvenile Hall;

3. Sidney Dwoskin, in his capacity as Chief of Health Services for the Los Angeles County Probation Department;

4. Eugene Weiner, in his capacity as Chief Physician of Los Angeles County Central Juvenile Hall;

5. Baxter Ward, in his capacity as Supervisor of the County of Los Angeles;

6. Peter F. Schabarum, in his capacity as Supervisor of the County of Los Angeles;

7. Kenneth Hahn, in his capacity as Supervisor of the County of Los Angeles;

8. James Hayes, in his capacity as Supervisor of the County of Los Angeles;

9. Edmund E. Edelman, in his capacity as Supervisor of the County of Los Angeles;

10. Dwight Manney, by his mother, Annie Mae Manney, as next friend;

11. A class of persons consisting of all males incarcerated at Central Juvenile Hall in Los Angeles, California, who are alleged to or who have been found to, have violated a law or ordinance.

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The petitioner class of male juveniles confined at Central Juvenile Hall in Los Angeles, California, prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on April 29, 1980, and modified by separate order filed on August 27, 1981.

## OPINION BELOW

The opinion of the Court of Appeals and the Order modifying that opinion, reported sub nom. Manney v. Cabell, 654 F.2d 1280 (9th Cir. 1981), appear in the appendix hereto. The Order of the District Court of the Central District of California, filed April 12, 1979 and the Judgment and Findings of Fact and Conclusions of Law

of the District Court of the Central District of California, entered on August 6, 1980, also appear in the appendix hereto.

## JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on April 29, 1980 and modified by separate Order of August 27, 1981. A timely Petition for Rehearing and Rehearing En Banc was denied on August 27, 1981, and this Petition for Certiorari is to be filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States:

Eighth Amendment:

> "Excessive bail should not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Fourteenth Amendment,

Section 1:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

Section 5:

> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article."

United States Code,

Title 42:

Section 1983:

> Civil Action for Deprivation of Rights. Every person who, under color of any statute, ordinance, regulation, custom, or usuage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Constitution of the State of California,

Article I:

Section 17:

> "Cruel or Unusual Punishments; Excessive Fines. Cruel or unusual punishment may not be inflicted or excessive fines imposed."

California Welfare and Institutions Code:

Section 202

Purpose; Liberal Construction. "(a) The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to protect the public from criminal conduct by minors; to impose upon the minor a sense of responsibility for his own acts; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when necessary for his welfare or for the safety and protection of the public; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes."

Section 502

Purpose; Liberal Construction. "The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his home, as will serve the spiritual, emotional, mental and physical welfare of the minor and the best interest of the state; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes." [repealed by Stats. 1977 c. 9-10 p. 2783, §4].

Section 602

Minors Violating Laws Defining Crime; Minors Failing to Obey Court Order. "Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any

city or county of this state defining crime other than an ordinance establishing curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

Section 851

Nature; Conduct. "The juvenile hall shall not be in or connected with, any jail or prison, and shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible."

STATEMENT OF THE CASE

On September 29, 1975, Dwight Manney, by his mother as next friend, filed this action on behalf of himself and a class of male juveniles confined at Central Juvenile Hall in Los Angeles, California. Pursuant to 42 U.S.C. §1983, the complaint challenged numerous conditions, practices and policies at Central Juvenile Hall

("C.J.H.) that were alleged to violate the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution. The complaint also alleged that these same conditions, practices and policies violated Section 502 of the California Welfare and Institution Code, (since amended and replaced by Section 202) and Article I, §17 of the Constitution of the State of California.

The jurisdiction of the District Court as to the federal claim was invoked under 28 U.S.C. §1343(4), this being an action to secure equitable relief under an Act of Congress providing for the protection of civil rights, 42 U.S.C. §1983. The jurisdiction of the District Court as to the State claims was invoked under principles of pendent jurisdiction, the state

claims arising out of the same transactions and events as the federal claims.

After filing of the complaint and certification of the class, the parties engaged in extensive pre-trial proceedings and discovery between November, 1975 and September, 1976. In May 1976, the District Court denied, without opinion, respondents' Motion For An Order For Abstention.

On May 10, 1976, the District Court issued a preliminary injunction with respect to overcrowding at Central Juvenile Hall. An eight-day trial was held before the District Judge sitting without a jury in September and October of 1976.

On April 12, 1979, the District Court issued an Order, included in the appendix hereto, ruling that

there were no constitutional or statutory violations at Central Juvenile Hall with respect to some of the claims made by petitioners. No appeal was taken by petitioners from that portion of the Order. The Court of Appeals described the remainder of the District Court's order as follows:

> "The district court did find that overcrowded conditions, certain hygienic practices, and the system of medical care at [Central Juvenile Hall] violated the provisions of the United States and California Constitutions that prescribe cruel and unusual punishment (U.S. Const. amend. VIII Cal. Const. art. I §17) and also violated Section 502 of the California Welfare and Institutions Code..."

Respondents appealed. The jurisdiction of the Court of Appeals was invoked pursuant to 28 U.S.C. §1292(a), the district court's order being injunctive but interlocutory.

The issues raised by the respondents on their appeal to the Court of Appeals concerned only the substantive merits of the District Court's decision. These included whether the petitioner class was entitled to any relief on the facts presented below, and whether the intervening decision of this Court in Bell v. Wolfish, 441 U.S. 520 (1976), required reversal of the District Court's Order. Neither party raised the question of abstention in the appellate briefs. At oral argument, however, the Court of Appeals, sua sponte, questioned counsel for both parties as to whether this case was an appropriate one for abstention. Subsequent to oral argument, the Court of Appeals issued an Order requiring further briefing on the issue of abstention, and the parties briefed the issue.

The Court of Appeals, relying primarily on the theory of abstention "which...has its foundations in the Supreme Court's decision in Railroad Commission v. Pullman Co., 312 U.S. 496... (1941)," held that the District Court should have abstained from exercising its jurisdiction. Manney v. Cabell, supra, 654 F.2d, at 128. It found that the case fell within Pullman because "a state's operation of its detention facilities involves a sensitive area of social policy," that a decision by California courts under state law "could well obviate the need for constitutional adjudication of the conditions of confinement," and that the state statutes involved had not been construed by the state courts in connection with conditions of confinement at juvenile halls. In its initial opinion, the

Court of Appeals did not discuss the issue, raised by petitioners in their post-argument brief, of whether Monroe v. Pape, 365 U.S. 167 (1961) and McNeese v. Board of Education, 373 U.S. 668 (1963) preclude abstention or entitle petitioners to federal court adjudication of their federal constitutional claims raised under 42 U.S.C. 1983 without exhaustion of state judicial remedies under state law. Petitioners, therefore, sought rehearing on this question. In denying the petition for rehearing and rehearing en banc, the Court of Appeals panel addressed this issue by adding the following to its opinion as footnote 7:

> "In a petition for rehearing, the plaintiffs raise the concern that our holding on Pullman abstention implies an incorrect conclusion on the question of whether there is an exhaustion of remedies requirement applicable to

suits brought under section 1983. We do not hold that, as a general matter, plaintiffs bringing suit under section 1983 must always exhaust the possible bases of relief provided by state law. Instead, we rely upon the Supreme Court's application of the Pullman abstention doctrine in Boehning v. Indiana State Employees Association, Inc., 423 U.S. 6, 96 S.Ct. 168, 46 L.Ed.2d 148 (1975) (per curiam). That decision illustrates that abstention may be proper, not only when a state statute is itself attacked, but also when a state action is attacked on constitutional grounds.

The plaintiffs expressly base their challenge to state action on two grounds: constitutional violations and state law violations. Where the plaintiff identifies state law as a source of his remedy, and where the state statute provides a significant opportunity for relief which has not yet been defined by the state courts, abstention is appropriate. We do not reach the more difficult question of application of the Pullman doctrine to a challenge to state action where the plaintiff has not sought relief under state statutes."

The Court of Appeals vacated the judgment of the district court and remanded the case to the district court, stating that:

> "The district court should retain jurisdiction of the federal constitutional issues at the request of either party, pending proceedings in the state courts. [citations omitted]." 654 F.2d at 1285.

The opinion below recognized that its decision "places an added burden on the [petitioners]" but gave no further consideration to the fact that the case had been fully tried on all issues below, had been pending in the federal courts for more than four and one-half years prior to its decision to require abstention, and had not been appealed on abstention grounds.

## REASONS FOR GRANTING THE WRIT

### I

### THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION IN MONROE V. PAPE

In this case, petitioners challenged the conditions of their confinement at Central Juvenile Hall ("C.J.H."). The District Court, after expressly deciding that abstention was not appropriate, and after an extensive trial, held that certain conditions at C.J.H. did violate the petitioners' federal constitutional rights as protected by 42 U.S.C. §1983. The Court also held that those conditions violated petitioners' rights as protected under state statutory and constitutional law; petitioners did not challenge state law, but rather challenged the conduct of

state officials which, they asserted and the District Court held, violated state as well as federal law.

Four and one-half years after the filing of the complaint, and after an extensive trial on the merits, the Court of Appeals for the Ninth Circuit held that the trial judge should have abstained from hearing the case on the merits. That holding of the Ninth Circuit conflicts with this Court's holding in Monroe v. Pape, 365 U.S. 167 (1961), that plaintiffs in civil rights actions do not have to file suit in state courts, seeking relief on the basis of state law, before they may proceed in federal court on their Section 1983 claims.

Congress, by enactment of Section 1983 of Title 42, has provided a federal right of action to persons deprived of

rights secured by the Constitution and laws of the United States. In Monroe v. Pape, 365 U.S. 167 (1961) and McNeese v. Board of Education, 373 U.S. 668 (1963), this Court held that persons who seek to redress deprivation of federal constitutional rights need not initiate state judicial proceedings or pursue remedies that may be available under state law before they bring suit in federal court under 42 U.S.C §1983. As stated in Monroe v. Pape, supra, 365 U.S. at 180:

> "It is abundantly clear that one reason the legislation [42 U.S.C. §1983] was passed was to afford a federal right in federal court because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies."

On the need to seek state judicial relief prior to initiation of federal court proceedings under 42 U.S.C. §1983, Monroe concluded:

> "It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplemental to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." 365 U.S. at 183.

In McNeese v. Board of Education, supra, this Court relied on Monroe v. Pape and held that plaintiffs did not have to exhaust alternative, state administrative remedies before proceeding in federal court on constitutional claims. See also Ellis v. Dyson, 421 U.S. 426 (1975); Huffman v. Pursue Ltd., 420 U.S. 592, 609, n. 21 (1975); Patsy v. Florida Intern. University, 634 F.2d 900, 919 et seq. (5th Cir., 1981,

Hatchett, J., dissenting), cert. granted, sub. nom. Patsy v. Bd. of Regents of Fl., 50 U.S.L.W. 3244 (October 6, 1981). The decision of the Court of Appeals in this case is contrary to the principle of Monroe and its progeny because it requires that petitioners seek state judicial relief prior to initiation of their federal civil rights action in federal court.

In effect, the Court of Appeals has required petitioners to pursue and exhaust an uncertain state remedy before presenting their constitutional claims to the federal court under 42 U.S.C. §1983. This requirement is being imposed, not because the interpretation of the state law involved is necessary to petitioners' constitutional claims, but merely because respondents' conduct may be

illegal under a state law that is unclear. The Supreme Court, in Monroe v. Pape, supra, and McNeese v. Board of Education, supra, held that if conduct by state or local officials is unconstitutional, federal civil rights plaintiffs can seek federal court relief against those officials under 42 U.S.C. §1983, without prior resort to state courts, even when state law provides a remedy. The reasons for this, as stated in Monroe, is that 42 U.S.C. §1983 was intended by Congress to reach unconstitutional conduct by individuals acting as state or local governmental employees, whether that conduct is authorized or unauthorized by state law.

Thus, petitioners would be entitled to pursue their federal remedies first even if state law provided them with a clear remedy. The

existence of a remedy in state court that is merely speculative should not place them in a worse position regarding their right to federal court resolution of their Section 1983 claims. Resolution of the state law ambiguities by the state court in this case will merely establish what Monroe and McNeese assume as a given in their analyses -- that state law provides a remedy for the conduct complained about by federal civil rights plaintiffs. Since Monroe and McNeese hold that state court determination of that issue is irrelevant to a plaintiff's right to pursue constitutional claims in federal court before invoking the state remedy, the Court of Appeals' decision requiring petitioners to initiate state judicial proceedings conflicts with those earlier decisions of this Court.

The Court of Appeals' opinion does not directly express its result in terms of exhaustion of state judicial remedies, nor does it discuss any distinction between its results and the exhaustion barred by Monroe v. Pape, supra. Footnote 7 does state that:

> "We do not hold that, as a general matter, plaintiffs bringing suit under Section 1983 must always exhaust the possible bases of relief provided by state law."

This disclaimer of a general exhaustion requirement clearly implies that exhaustion is being required of petitioners in this case. Monroe v. Pape, however, formulates a general rule under 42 U.S.C. §1983, and, therefore, unless the Court of Appeals' requirement of exhaustion can be justified by an

exception to that general rule, the decision below is in conflict with Monroe v. Pape.

The exception to Monroe v. Pape relied on by the Court of Appeals is the doctrine of "Pullman abstention."[1/] The Ninth Circuit failed, however, to give proper recognition to the fact that in Section 1983 cases, Pullman abstention has traditionally been applied only when a state statute is challenged on federal constitutional grounds. Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289 (1979); Bellotti v. Baird, 428

1/ In Railroad Commission of Texas v. Pullman Company, 312 U.S. 496 (1941), this Court held the abstention is appropriate in non-Section 1983 cases if an adjudication of a "doubtful" state law issue can avoid constitutional issues. Pullman itself, however, arose as a challenge to adoption by a state authority of a regulation with state-wide effect. The claim was based directly on the Fourteenth Amendment and did not invoke 42 U.S.C. §1983 as a ground for relief.

U.S. 132 (1976); Kusper v. Pontikes, 414 U.S. 51 (1973); Harrison v. NAACP, 360 U.S. 167 (1959).

In Babbitt v. United Farm Workers Nat. Union, supra, 442 U.S. at 306, this Court recently reiterated that abstention is only appropriate in narrowly limited "special circumstances" and that "the paradigm" of these special circumstances is the case where a state statute is challenged on federal constitutional grounds and the construction of the statute by a state court could eliminate the federal constitutional issue from the case.

Petitioners' challenge to the conditions of confinement at Central Juvenile Hall does not fall within this narrow exception to the usual requirement that federal courts provide "an immediate decision" in §1983 cases.

Babbitt v. United Farm Workers, supra, 442 U.S., at 306. Petitioners do not contend that any state statute is unconstitutional. Instead, they challenge conduct by county officials at Central Juvenile Hall, arguing that this conduct is both prohibited by the United States Constitution and also by state law. Adjudication of the federal constitutionality of that conduct is in no way dependent upon construction of state law by the state judiciary.

Even in the traditional Pullman abstention cases involving challenges to the constitutionality of state statutes, abstention is not appropriate where the meaning of state law can only be determined by "extensive adjudication, under the impact of a variety of factual situations." Baggett v. Bullitt, 377 U.S. 360, 378 (1964); Babbitt v. United

Farm Workers Nat. Union, supra, 442 U.S., at 308. The extended delay and added expense of a trial in state court after a full adjudication of the case in federal court is also, in and of itself, a ground on which to refuse abstention. Harris County Comm'rs Court v. Moore, 420 U.S. 77, 84 (1975); Hostetter v. Idlewild Liquor Corp., 377 U.S. 324, 329 (1964).

Irreparable harm to civil rights plaintiffs that may arise during state proceedings is a further sound reason to decline abstention in an action brought pursuant to 42 U.S.C. §1983. Gibson v. Berryhill, 411 U.S. 564 (1973); Zwickler v. Koota, 389 U.S. 241 (1967). Compare Bellotti v. Baird, supra, 428 U.S. at 136, n. 6 and 150-151; Harrison v. N.A.A.C.P., supra, 360 U.S. at 178-179 (cases in which the

statutes at issue were not enforced during the pendency of state proceedings).

The decision of the Court of Appeals in this case conflicts with each of these principles.[2/] Petitioners'

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2/ The Court of Appeals in this case cited, in support of its holding on abstention, Boehning v. Indiana Employee Assn., 423 U.S. 6 (1975). Boehning was a three-paragraph per curiam decision, which upheld a District Court decision to abstain in a Section 1983 action in which plaintiff challenged her dismissal from state employment without a pretermination hearing. In Boehning, there was an ambiguous state statute which could have been quickly and simply determined by a state court to require the hearing plaintiff sought on the basis of legal analysis without a trial on factual issues. Because of the distinctions between this case and the Boehning -- here there has already been an extensive trial on disputed, complicated factual questions after a considered trial court decision not to abstain; relief under state law would require another such trial; and there has already been a finding of serious and continuing irreparable harm to the class of incarcerated juvenile petitioners -- the Ninth Circuit's reliance on Boehning is misplaced. The Ninth Circuit ignored the overriding importance given those very real, practical distinctions by this Court in Baggett v. Bullitt,

challenge to conditions at Central Juvenile Hall involves the application of broad principles to a number of particularized factual disputes. The federal constitutional issues could not be and were not resolved merely by an interpretation of the state statute, but only after full adjudication of contested and particularized factual disputes. The proceedings below had been pending for four and one-half years prior to the appellate court's sua sponte decision to abstain and had involved the expenditure of literally thousands of attorney hours and hundreds of hours of judicial attention prior to the appellate decision. Respondents did

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2/ (Continued)
supra, Babbitt v. United Farm Workers Nat. Union, supra, Harris County Comm'rs Court v. Moore, supra, Hostetter v. Idlewild Liquor Corp., supra, and Gibson v. Berryhill, supra, discussed above.

not raise the issue of abstention on their appeal, perhaps because of their own investment of time and success on numerous issues prior to the appeal. The petitioners' claims of constitutional wrong and irreparable harm have been found valid after a full trial on the merits. A resort to state court to retry the case in light of this history would be contrary to the careful regard this Court has given to the practical effect of an abstention decision in each of its prior decisions.

The principle of non-exhaustion, as expressed by Monroe v. Pape, is integral to the congressional purpose in enactment of 42 U.S.C. §1983. Section 1983 was intended to reach unconstitutional conduct, whether authorized or unauthorized by state law. Monroe v. Pape, supra, 365 U.S. at 183.

Section 1983, enacted pursuant to Section 5 of the Fourteenth Amendment, was intended to establish the federal courts as the primary forum for suits to enforce and protect those rights. It will violate this important federal policy to require a civil rights plaintiff, who requires injunctive relief to end unconstitutional state conduct to seek first his relief from the state judiciary under a state law.

II

THE DECISION BELOW CONFLICTS WITH OTHER FEDERAL COURTS OF APPEAL

This petition should also be granted because the decision below conflicts with the decisions of other

federal appellate courts, specifically the decision of the Second Circuit in McRedmond v. Wilson, 533 F. 2d 757 (2d Cir. 1976) and the decision of the Sixth Circuit in Hanna v. Toner, 630 F. 2d 442 (6th Cir. 1980) cert. den. ___ U.S. ___, 101 S.Ct. 1365 (1981).

In McRedmond v. Wilson, [3] the Second Circuit addressed the issue presented in this proceeding, viewing the matter as one that "concerns the interplay of the doctrines of abstention and exhaustion of state remedies in the context of a 42 U.S.C. §1983 civil rights action in which a variety of constitutional and statutory issues are raised."

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[3] In the district court, petitioners in this case relied primarily on McRedmond to argue successfully that abstention was inappropriate.

In McRedmond the Court of Appeals held that the civil rights plaintiffs, a class of juveniles confined at a state institution, were not required to seek relief initially in state court under a state statute, similar to Sections 202 and 851 of the California Welfare and Institutions Code, providing that these juveniles were entitled to such "care, protection and assistance as will best enhance their welfare." McRedmond v. Wilson, supra, 533 F. 2d at 762. The state court had previously interpreted the statute to require that juveniles be provided adequate treatment as a matter of "due process". Ibid.

In its opinion below, the Court of Appeals for the Ninth Circuit did not distinguish McRedmond, although it discussed the fact that the state courts had not interpreted the state

statutes "with respect to conditions of... confinement" at a juvenile hall. On the other hand, the California Supreme Court had, like the New York Court of Appeals, held that the purposes of the juvenile court law were to provide "rehabilitation and treatment, not punishment." Manney v. Cabell, supra, 654 F. 2d at 1284. This renders the present proceeding indistinguishable from McRedmond and, because the Court of Appeals reached a result directly opposite to McRedmond, a grant of this Petition for Writ of Certiori is proper under Rule 17.1(a) of this court.

The decision below also conflicts in principle with Hanna v. Toner, supra, in which the Court of Appeals for the Sixth Circuit held that abstention was inappropriate in a case in which the civil rights plaintiffs, a class of

juveniles, challenged the condition of confinement and treatment at juvenile detention homes in Ohio. Further, the decision below conflicts with the result in Taylor v. Sterrett, 499 F. 2d 367, 368 (5th Cir. 1974), cert. den. 420 U.S. 983 (1975) in which the Fifth Circuit approved the adjudication of pendent state claims in a case challenging conditions of confinement on constitutional grounds.

## III

## CONCLUSION

The decision below conflicts with this Court's decision in Monroe v. Pape because it requires petitioners to exhaust potential state judicial remedies prior to bringing suit in federal court under 42 U.S.C. §1983. The decision also conflicts with this Court's many decisions holding that Pullman abstention is only appropriately applied in cases in which plaintiffs challenge state law, but not state conduct, and in which an extensive trial on the facts, resulting in a finding of irreparable

harm, has not already been completed. The decision below also conflicts with decisions in other circuits, including the decision of the Court of Appeals for the Second Circuit in McRedmond v. Wilson, supra. For these reasons, petitioners request that their Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit be granted.

DATED: November 25, 1981

Respectfully submitted

ALAN RADER
MARY S. BURDICK
ERICH P. WISE

By Mary S. Burdick
MARY S. BURDICK
COUNSEL FOR PETITIONERS

# Appendix

# 81-996

Office - Supreme Court, U.S.
FILED
NOV 25 1981
ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

---

DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,

Petitioners,

vs.

KENNETH C. FARE, in his capacity as Los Angeles County Chief Probation Officer; THE SUPERINTENDENT OF LOS ANGELES COUNTY CENTRAL JUVENILE HALL; PETER F. SCHABARUM, KENNETH HAHN, EDMUND E. EDELMAN, DEANE DANA, and MICHAEL ANTONOVICH, in their capacities as Supervisors of the County of Los Angeles,

Respondents.

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APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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## APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,

Plaintiffs-Appellees,

v.

CALRENCE E. CABELL, in the capacity as Los Angeles County Acting Chief Probation Officer; JOHN SARCHETT, in his capacity as Superintendent of Los Angeles County Central Juvenile Hall; SIDNEY DWOSKIN, in his capacity as Chief of Health Services for the Los Angeles County Probation Department; EUGENE WEINER, in his capacity as Chief Physician of Los Angeles County Central Juvenile Hall; BAXTER WARD, JAMES HAYES, KENNETH HAHN, PETER F. SCHABARUM, and EDMUND E. EDELMAN, in their capacities as Supervisors of the County of Los Angeles,

Defendants-Appellants

No. 79-3260

D.C. No. CV 75-3305-R

OPINION

Filed April 29, 1980

Appeal from the United States District Court for the Central District of California
The Honorable Manuel L. Real, Presiding

Before: KENNEDY and HUG, Circuit Judges, and SMITH*, District Judge

HUG, Circuit Judge:

This is a class action, brought under 42 U.S.C. § 1983, challenging almost every condition of confinement at Central Juvenile Hall (CJH) in Los Angeles. The complaint alleged violations of several federal and state constitutional provisions, as well as state statutory provisions.

The defendants in the action are the Acting Chief Probation Officer of Los Angeles County, the Superintendent of CJH and various other county and CJH offi-

*The Honorable Russell E. Smith, Senior United States District Judge for the District of Montana, sitting by designation.

cials (collectively, the "County"). The district court, pursuant to Fed. R. Civ. P. 23(b)(2), certified the class as all males incarcerated at CJH "who are alleged to be or have been found to be persons described by California Welfare and Institutions Code § 602."[1/]

The district court issued a preliminary injunction on May 10, 1976, which was modified on December 29, 1976, with respect to overcrowding at CJH. Trial was held before the district judge sitting without a jury during September and October, 1976. Progress reports were submitted to the district court subsequent to the trial, and several conferences were held in an attempt to settle the matter, but the parties could not reach any agreement.

On April 12, 1979, the district court issued the order and judgment which

is the subject of this appeal. With respect to the majority of the claims, the court found no constitutional or statutory violations. No appeal was taken from this portion of the order, and thus, those issues are not before us in this appeal. The district court did find that overcrowded conditions, certain hygenic practices, and the system of medical care at CJH violated the provisions of the United States and California Constitutions that prescribe cruel and unusual punishment (U.S. Const., amend. VIII; Cal. Const., art. I, § 17) and also violated section 502 of the California Welfare and Institutions Code.[2/]

More specifically, the district court ordered that the County could not permit the number of juveniles housed at CJH to exceed the maximum rated capacity for CJH as established by the California

Youth Authority (CYA), that beds in the infirmary and segregation units could not be counted in determining that capacity, and that no juvenile could be required to sleep on the floor except for prescribed medical reasons. In addition, the district court ordered that the County allow each juvenile to take one shower a day of at least five minutes duration and that each shower stall be equipped with a device to maintain privacy and with individual controls to regulate the flow and temperature of the water. The order further specified that the County was not to permit any juvenile to be assigned to a room without a toilet unless a procedure was established that would allow the juveniles, when required to be in their rooms, to gain access to a toilet without asking permission. The district court also ordered comprehensive changes in the

medical care system at CJH.[3/] The County appeals from the relief granted, contending that there are no constitutional or statutory violations in the conditions of confinement at CJH.

I

CJH is a temporary detention facility, housing juveniles at various stages in their progression through the California juvenile justice system. A juvenile accused of a criminal act may be temporarily detained for up to 72 judicial hours prior to a formal detention hearing, which is analogous to the preliminary hearing phase of the adult criminal justice system. At the detention hearing the juvenile court may order the release of the juvenile or it may order further detention of the juvenile, pending an adjudication hearing. See Welf. & Inst. Code § 636. After the adjudication

hearing, which is similar to an adult trial, see Welf. & Inst. Code §§ 650-780, the case may be continued for up to two weeks for a disposition hearing, which is similar to an adult sentencing. At the disposition hearing the court formulates and orders an appropriate plan of treatment for the juvenile.

Almost 30% of the juveniles at CJH are awaiting their adjudication hearing, and a like number are awaiting their disposition hearing. A small number of juveniles are detained at CJH after their disposition hearing, while awaiting the availability of a bed at the appropriate treatment facility. When this suit was filed, the total number of section 602 juveniles at CJH numbered approximately 340. CJH also housed about 190 other juveniles who are not subject to section 602, and thus are not included in the

plaintiff class.

The average length of stay of juveniles of the plaintiff class at CJH is approximately two weeks. Between 90-95% of the section 602 juveniles leave CJH within two months.

II

We are faced initially with the question of whether the district court should have abstained from exercising its jurisdiction. Although there are several different theories of abstention, see C. Wright, Handbook of Law of Federal Courts § 52, at 218 (3rd. ed. 1976), the theory with which we are concerned in the present case has its foundation in the Supreme Court's decision in Railroad Commission v. Pullman Co., 312 U.S. 496 (1941).

To determine the appropriateness of Pullman abstention, this court has set forth the following guidelines for con-

sideration in each case:

> (1) The Complaint "touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open."
> (2) "Such constitutional adjudication plainly can be avoided if a definitive ruling on the stage issue would terminate the controversy."
> (3) The possibly determinative issue of state law is doubtful.

Canton v. Spokane School District No. 81, 498 F. 2d 840, 845 (9th Cir. 1974) (footnote omitted); cited with approval in Sederquist v. Tiburon, 590 F. 2d 278, 281 (9th Cir. 1978); Isthmus Landowners Association v. California, 601 F. 2d 1087, 1091 (9th Cir. 1979). Ordinarily, all three exceptional circumstances must be present to justify abstention.

The appellants in this action made a motion requesting the district court to abstain. They relied principally on the fact that the California courts have

not construed Welf. & Inst. Code §§ 202 and 851 with respect to actual conditions of confinement at juvenile detention centers.[4/] The specific language of the two sections that raises the construction problem is: "[T]o secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents," in section 202; and, "It shall be conducted in all respects as nearly like a home as possible," in section 851.

Section 202 and its predecessor, section 502, have been construed by the California courts in the context of whether a juvenile should be taken from the home and committed to CYA care. See People v. Olivas, 17 Cal. 3d 236 (1976); In re Aline D., 14 Cal. 3d 557 (1975); In re Wayne J., 97 Cal. App. 3d 776 (1979); In re Todd W., 96 Cal. App.

3d 408 (1979); In re Carrie W., 89 Cal. App. 3d 642 (1979). Neither section 202 nor section 851 has been interpreted with respect to the conditions of such confinement. The California Supreme Court has stated that the juvenile court law is to be liberally construed to carry out the purposes of section 502 (now section 202), and that juvenile proceedings are designed for rehabilitation and treatment, not punishment. See People v. Olivas, 17 Cal. 3d at 255, In re Aline D.. The plaintiffs in this action asserted sections 202 and 851 as bases for relief along with their state and federal constitutional claims.

Having set forth the state law issues presented by the plaintiffs, we must apply the criteria for determining the propriety of Pullman abstention. Application of the abstention doctrine

involves a "discretionary exercise of a court's equity power," the propriety of which is to be determined on a case-by-case basis. Baggett v. Bullitt, 377 U.S. 360, 375 & n. 11 (1964). We bear in mind that the federal courts are particularly hesitant to abstain in section 1983 cases. See Canton v. Spokane School District No. 1, 498 F. 2d at 845-46; see also Field, Abstention in Constitutional Cases: The Scope of the Pullman Abstention Doctrine, 122 U. Pa. L. Rev. 1071, 1131-34 (1974).

There is no question that a state's operation of its detention facilities involves a sensitive area of social policy, an area into which the federal courts do not lightly intercede. See Spain v. Procunier, 600 F. 2d 189, 193-94 (9th Cir. 1979); Pell v. Procunier, 417 U.S. 817, 825-26 (1974). The operation of juvenile halls such as CJH clearly satisfies the

first Pullman criterion.

The second Pullman guideline is also applicable to this case. The wording of sections 202 and 851 appears to evidence an intention that conditions at juvenile halls meet high standards. The standard expressed in those sections could plainly be interpreted to require that conditions at juvenile halls be more favorable to the juvenile than the minimum standards guaranteed by the federal constitution.[5/]

A review by the California courts of the conditions of confinement at CJH under the statutory standards could well obviate the need for a constitutional adjudication of the conditions of confinement. The "nub of the whole controversy" may be the Welf. & Inst. Code sections. See Reetz v. Bozanich, 397 U.S. 82, 87 (1970). "A state court decision . . . could conceivably avoid any decision under

the Fourteenth Amendment and would avoid any possible irritant in the federal-state relationship." Id. at 86-87.

Having concluded that the first two Pullman standards have been fulfilled we must determine whether the possibly determinative issue of state law is doubtful. The California courts have not construed the relevant statutes with respect to conditions of detention. While the language of the statutes seemingly requires a very high standard of care, the California Supreme Court has recognized that budgetary limitations may preclude maintenance of facilities necessary to provide the minor with optimum care and treatment. See In re Aline D., 14 Cal. 3d at 567. Especially in light of the recent statutory amendments, see note 2 supra, the interpretation of the potentially determinative statutory language is doubtful.

Because we find the existence of all three Pullman factors in the present case, we conclude that this is a proper case for application of this abstention doctrine. Our decision to abstain is further supported by the fact that the operation of California's juvenile halls is part of a comprehensive statutory scheme regulating the juvenile justice system in California. See Welf. & Inst. Code §§ 200-2006. 6/

III

Because we find the district court should have abstained from exercising its jurisdiction, we vacate the judgment of the district court and remand the case to the district court. The district court should retain jurisdiction of the federal constitutional issues at the request of either party, pending proceedings in the state courts. See

England v. Louisiana Board of Medical Examiners, 375 U.S. 411 (1964); American Trial Lawyers Association v. New Jersey Supreme Court, 409 U.S. 467 (1973).

We are not unmindful that the decision in this case places an added burden on the plaintiffs. The sensitivity and importance of the issues involved, however, outweigh such considerations. It is also important that current conditions at CJH, which have changed significantly since the trial in 1976, be evaluated under the standards required by the California statutes.

VACATED AND REMANDED.

FOOTNOTES

1/ Page 2 California Welfare and Institutions Code § 602 provides:

> Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

2/ Page 3 Section 502 has been repealed and replaced by § 202 of the California Welfare and Institutions Code which provides:

> (a) The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental and physical welfare of the minor and the best interests of the state; to protect the public from criminal

conduct by minors; to impose on the minor a sense of responsibility for his own acts; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when necessary for his welfare or for the safety and protection of the public; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes.

(b) The purpose of this chapter also includes the protection of the public from the consequences of criminal activity, and to such purpose probation officers, peace officers, and juvenile courts shall take into account such protection of the public in their determinations under this chapter.

Section 202 is essentially the same as section 502, the major change being the addition of phrases emphasizing that one of the objectives of the act is to protect the public from

criminal conduct of minors and to impose upon the minor a sense of responsibility for his own acts. One California court has stated that this amendment sets forth "a long overdue objective of juvenile justice." In re Gregory S., 85 Cal. App. 3d 206, 213 (1978).

Section 202 was enacted in 1976, when California revised and amended the entire statutory framework of its juvenile justice system. See Cal. Welf. & Inst. Code §§ 200-2006 (West Supp. 1980). Unless otherwise noted, all references in this opinion are to the new code sections.

3/ Page 5 The district court had also ordered relief with respect to establishment of an individualized treatment plan for the juveniles; however, this section of the order was vacated by the district court on May 18, 1979, and thus is not the subject of any claim on this appeal.

4/ Page 9 Welf. & Inst. Code § 851 provides:

> The juvenile hall shall not be in or connected with, any jail or prison, and shall not be deemed to be nor be treated as a penal institution. It

shall be conducted in all respects as nearly like a home as possible.

5/ Page 12 In Bell v. Wolfish, 441 U.S. 520, 535 & n. 16 (1979), the Supreme Court held that, with respect to conditions of confinement, pretrial detainees are entitled to the protections of the Due Process Clause, which are greater than the protections afforded by the cruel and unusual punishment proscription of the Eighth Amendment.

There are approximately equal numbers of pre-adjudicatory and post-adjudicatory juvenile detainees at CJH. The California Supreme Court has declared that the cruel and unusual punishment provisions of the United States and California Constitutions do not apply to juvenile commitments, because the purpose of such a commitment is rehabilitation, not punishment. See People v. Olivas, 17 Cal. 3d 236, 255 (1976); In re Gary W., 5 Cal. 3d 296, 301-03 (1971). The correct standard of review in this case is therefore under the the Due Process Clause.

There is also some authority that there is a constitutional right to rehabilitative treatment for the juveniles. See Nelson v. Heyne,

491 F. 2d 352, 360 (7th Cir.), cert. denied, 417 U.S. 976 (1974) (holding that such a right exists). Contra, Morales v. Turman, 562 F. 2d 993, 998 (5th Cir. 1977) (doubting the existence of such a right).

6/ Page 14 Annual inspection by juvenile court judges of juvenile halls is required by Welf. & Inst. Code § 209. Although this inspection is obviously not akin to a judicial proceeding, it is a further indication of the state regulatory interests involved.

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,

Plaintiff Appellees,

v.

CLARENCE E. CABELL, in his capacity as Los Angeles County Acting Chief Probation Officer; JOHN SARCHETT, in his capacity as Superintendent of Los Angeles County Central Juvenile Hall; SIDNEY DWOSKIN, in his capacity as Chief of Health Services for the Los Angeles County Probation Department; EUGENE WEINER, in his capacity as Chief Physician of Los Angeles County Central Juvenile Hall; BAXTER WARD, JAMES HAYES, and EDMUND E. EDELMAN, in their capacities as Supervisors of the County of Los Angeles,

Defendants-Appellants

No. 79-3260

D.C. No. CV 75-3305-R

ORDER

Filed August 27, 1981

Appeal from the United States
District Court for the
Central District of California
The Honorable Manuel L. Real, Presiding

Before: KENNEDY and HUG, Circuit Judges,
and SMITH*, District Judge

The panel as constituted in the above case has voted to add a new footnote 7 and to deny the petition for rehearing. Judges Kennedy and Hug have voted to reject the suggestion for a rehearing en banc and Judge Smith recommends rejection of the suggestion.

The full court has been advised of the en banc suggestion and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

Footnote 7 is ordered added to the second to last paragraph of the opinion, slip op. at 2926, at the end of the first sentence with the phrase, "and

*Honorable Russell E. Smith, Senior United States District Judge for the District of Montana, sitting by designation.

remand the case to district court." Footnote 7 reads as follows:

> In a petition for rehearing, the plaintiffs raise the concern that our holding on Pullman abstention implies an incorrect conclusion on the question of whether there is an exhaustion of remedies requirement applicable to suits brought under section 1983. We do not hold that, as a general matter, plaintiffs bringing suit under section 1983 must always exhaust the possible bases of relief provided by state law. Instead, we rely upon the Supreme Court's application of the Pullman abstention doctrine in Boehning v. Indiana State Employees Association, Inc., 423 U.S. 6 (1975) (per curiam). That decision illustrates that abstention may be proper, not only when a state statute is itself attacked, but also when a state action is attacked on constitutional grounds.
>
> The plaintiffs expressly base their challenge to state action on two grounds: constitutional violations and state law violations. Where the plaintiff identifies state law as a source of his remedy, and where the

> state statue provides a significant opportunity for relief which has not yet been defined by the state courts, abstention is appropriate. We do not reach the more difficult question of application of the Pullman doctrine to a challenge to state action where the plaintiff has not sought relief under state statutes.

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| DWIGHT MANNEY, et. al., Plaintiffs, vs. CLARENCE E. CABELL, et. al., Defendants. | CV 795-3305-R ORDER Filed April 12, 1979 |

Plaintiffs filed a complaint asking for injunctive and declaratory relief to require changes in the operations of Los Angeles County Central Juvenile Hall (hereafter CJH) in order to obviate claimed violation of the constitutional and California statutory rights of juveniles held in custody for claimed violations of law.

On November 20, 1975 this Court entered an order certifying this action to proceed as a class action and was defining the class as "all male juveniles incarcer-

ated at Los Angeles County Central Juvenile Hall who are alleged to be or have been found to be persons described by California Welfare and Institutions Code § 602."

The matter proceeded to trial and was held pending attempts to settle the controversy between plaintiffs and defendants. Counsel have been advised that settlement cannot be accomplished and the Court submitted the matter for decision.

Many of the claims of constitutional deficiency in the operation of CJH are not supported by the evidence. Those include: segregation, movement and classification practices, general cleanliness and hygienic conditions; maintenance of a juvenile's dignity, self-respect; education, recreation, visiting, mail, telephone, discipline and staffing (except as hereafter indicated in medical practices) policies.

Although not models of the ideals expressed by many sociologists of what a juvenile hall should be, all of these, individually or collectively do not amount to violations of the protection guaranteed by the United States Constitution, the California Constitution or the California Welfare and Institutions Code.

Overcrowding, some hygienic practices, medical and psychiatric care, do, as disclosed by the evidence and the personal observations of the Court upon its visit to CJH amount to violations of United States and California Constitutional provisions proscribing cruel and unusual punishment and California Welfare and Institutions Code § 502 requiring "custody, care, and discipline as nearly as possible equivalent to that which should be given by his parents."

To correct the constitutional and

statutory deficiencies IT IS ORDERED:

1. Overcrowding: (a) The total number of juveniles housed at CJH shall not exceed the maximum rated capacity of that institution as established by the California Youth Authority.

(b) Beds in the infirmary or any segregation unit shall not be included in determining the total maximum rated capacity.

(c) No juvenile shall be required to sleep, rest or stay on the floor at any time except when so prescribed by a medical doctor because of the physical or mental condition of the juvenile.

2. Hygiene: (a) Each juvenile housed at CJH shall be permitted to take a shower at least once a day. Time shall be allowed the juvenile to clean and refresh himself which shall, in no event, be less than five minutes.

(b) Each shower shall have a divider, screen or other device to maintain privacy and shall have controls to permit each juvenile to regulate the flow and temperature of water during his shower.

(c) No juvenile shall be assigned to a room or dormitory which does not have its own toilet unless procedures are established to enable a juvenile direct and immediate access, without the necessity of requesting permission to a toilet during all times of the day or night in which he is required to be in his room.

3. Medical: (a) Prior to admission to Central Juvenile Hall all juveniles shall be given a medical screening conducted in private by trained medical personnel. This admission medical screening consists of:

(i) A complete review of the existing medical records of each

juvenile admittee to determine possible medical needs for that juvenile;

(ii) Preparation of a complete medical history of the juvenile, and if possible from his family, and physicians or other professionals familiar with juvenile's medical background;

(iii) Routine testing for common diseases such as tuberculosis, anemia, sickle cell disease, gonorrhea and hepatitis, and if indicated by the juvenile's condition testing to determine whether the juvenile is under the influence of drugs or alcohol or is a drug, alcohol, or substance abuser in need of medical treatment for that condition;

(iv) Referral to a physician

of any juvenile who exhibits a condition or illness requiring treatment.

(b) Each juvenile admitted to Central Juvenile Hall shall be given a complete private physical examination by a physician within 48 hours of the juvenile's admission. The physician conducting the examination required by this paragraph shall:

(i) Review and supplement as necessary of the medical history of the juvenile prepared in the admission screening process in accordance with paragraph 3(a) of this order;

(ii) Determine whether the juvenile has been properly immunized for diptheria, tetanus, and polio and provide such immunization if necessary.

(iii) Review results of tests administered at admission screening examination, pursuant to paragraph 3(a) (iii) of this order;

(iv) Prepare and provide for implementation of a medical treatment and care program to meet the individual medical needs of each juvenile, or note in the medical records that the juvenile does not need medical care.

(c) Sick call shall be held at least three times daily, according to the following procedures:

(i) Sick call shall be conducted in private by a trained and qualified nurse, who shall be given adequate time to complete sick call rounds and record medical information as necessary on those rounds and shall record such

information promptly and completely;

(ii) Sick call attendance shall be at the request of the juvenile to be made according to sign-up procedures to be established by defendants and no probation officer or other staff member shall have the power to deny such attendance;

(iii) The names and medical records of those juveniles requesting sick call shall be made available to the nurse conducting that sick call in advance of the nurse's rounds, and each such juvenile's medical records shall be taken on sick call rounds;

(iv) A probation officer shall be available to accompany and assist the nurse on all sick call rounds;

(v) Defendant's shall estab-

blish written guidelines to govern the nurse's determination at the time of sick call whether a juvenile shall be referred to a physician or given medication.

(vi) Upon a nurse's determination that a juvenile should be referred to a doctor, a doctor's examination and treatment of the juvenile shall be provided:

(a) immediately, in the case of an emergency;

(b) within four hours in the case of non-emergency.

(d) The infirmary and rooms in which sick call, doctor's clinics, or other medical examination, treatment or procedures are conducted shall be maintained in a sanitary and medically adequate manner, and shall have available equipment and facilities that are adequate

for such examination, treatment and procedures. The purchase of new equipment, the remodeling of facilities, or the construction of new facilities shall be undertaken as necessary to accomplish this purpose.

(e) Written guidelines for determining when a probation officer shall bring a juvenile to the infirmary shall be established.

(f) A list shall be prepared of those medical conditions that can be properly treated by personnel and facilities available at the Central Juvenile Hall infirmary and those which cannot be so treated. The lists required to be compiled by this paragraph shall be posted in the infirmary and available to all personnel.

(g) A communication system shall be installed in the infirmary by which

juveniles in each room of the Central Juvenile Hall infirmary can summon nurses or other infirmary personnel.

(h) A regular schedule shall be established and implemented to assure frequent infirmary rounds by nurses to check the condition of patients in the infirmary.

(i) Appropriate and frequent cleaning schedules shall be established and implemented for all rooms and areas in the Central Juvenile Hall infirmary, including twice daily thorough disinfecting floor mopping, toilet and sink cleaning, and dusting of rooms, and all steps necessary to eliminate such unsanitary conditions from the infirmary as ants, mice, cockroaches or other vermin, and stains or other filth on the walls.

(j) Appropriate hygienic standards shall be established and implemented

for the infirmary at Central Juvenile Hall that provide adequate personal hygiene facilities for patients, use of plasticized coverings for beds, and training of housekeeping staff in specialized methods of cleaning infirmary areas.

(k) A medical records system at Central Juvenile Hall shall be established and implemented that insures:

(i) maintenance of complete, organized, and orderly medical records for each juvenile at Central Juvenile Hall;

(ii) minimization of the loss of medical records and complete duplicate replacement of lost records at Central Juvenile Hall;

(iii) maintenance of the confidentiality of all juvenile medical records and access to such

records by medical personnel only;

(iv) maintenance of accurate and current records on the administration of drugs and medication to each juvenile at Central Juvenile Hall;

(v) regular audit and review of the quality and adequacy of medical care provided at Central Juvenile Hall.

(l) Procedures shall be established and implemented to assure follow-up medical care for juveniles who leave Central Juvenile Hall suffering from illnesses or conditions discovered, noted, or treated while the juvenile is detained at Central Juvenile Hall. These procedures shall include;

(i) review of each juvenile's medical chart and records prior to each juvenile's departure from CJH;

(ii) notification of each juvenile, or his parents or guardian concerning any medical conditions discovered, noted, or treated while at CJH, and treatment recommended for the condition.

(m) A plan for changes in staff policy and procedures at, Central Juvenile Hall shall be established and implemented to insure:

(i) employment of sufficient full-time, fully-qualified nurses for the health needs of every juvenile at Central Juvenile Hall;

(ii) employment of qualified supervisory nursing personnel sufficient to fill all supervisory nursing positions at Central Juvenile Hall;

(iii) scheduled overlap of nursing shifts at Central Juvenile

Hall and routine communications between nurses on such shifts concerning the conditions of patients;

(iv) regularly scheduled meetings or case-conferences between nurses and doctors and psychiatrists at Central Juvenile Hall to provide for discussion of patients problems;

(v) use by nursing personnel at Central Juvenile Hall of a revised manual that comports with currently accepted nursing practices to govern nursing practices at Central Juvenile Hall;

(vi) training of Central Juvenile Hall probation staff concerning the possible effects of drugs on juveniles.

(n) A comprehensive plan for the

prevention and control of communicable diseases at Central Juvenile Hall shall be established and implemented. Such plan shall include:

(i) A routine procedure by which probation and medical personnel can and must immediately report all cases of communicable diseases at Central Juvenile Hall to the County Department of Health Services and its Acute Communicable Disease Control Department;

(ii) Procedures and facilities to isolate those with a communicable disease from those susceptible to the disease, including construction of scrubbing vestibules for medical personnel in isolation rooms, and methods of facilities to insure against placement of communicable diseased patients in regular, non-

isolation rooms.

(iii) Procedures for sanitization of line unit rooms immediately after transfer of communicable diseased patients from such rooms.

(iv) Integration of communicable disease prevention and control safeguards into population and movement procedures at Central Juvenile Hall.

(v) Establishment of contingency procedures for controlling the spread of communicable diseases at Central Juvenile Hall.

(o) Procedures to govern administration of medication at Central Juvenile Hall be established and implemented. Such procedures shall include:

(i) methods to verify identification of each juvenile to whom medication is given;

(ii) procedures to insure prescribed medication is given to juveniles who miss the regularly scheduled administration of their prescription because they are temporarily absent from Central Juvenile Hall for any reason;

(iii) a written formularly provided to each physician at Central Juvenile Hall that lists approved drugs stocked there, the approved uses of those drugs, and the preferred drug for common specific conditions;

(iv) maintenance of a complete drug and medication profile for each juvenile at Central Juvenile Hall;

(v) procedures to insure accurate and complete recordation of drug and medication administra-

tion at Central Juvenile Hall and allow for review, audit, and upgrading of the system of administration of drugs at Central Juvenile Hall.

(p) Special diets shall be provided to those juveniles who have a medical need for such diets. Defendants shall:

(i) employ a dietician to develop a special dietary program for Central Juvenile Hall;

(ii) provide training for cooks in the preparation of special diets;

(iii) establish and implement procedures for communication between medical and dietary personnel concerning juveniles who need special diets.

(q) Laboratory equipment and procedures at Central Juvenile Hall shall be

modernized and upgraded to insure that:

(i) the laboratory will be capable of handling all tests required to provide adequate medical care to juveniles;

(r) Medical equipment at Central Juvenile Hall shall be upgraded as follows:

(i) modernization of equipment in the physiotherapy room to meet present community standards, including repair of replacement of specialized baths and provisions of examination tables;

(ii) purchase and use of modern x-ray equipment for Central Juvenile Hall;

(iii) purchase and use of electrocardiograph equipment for Central Juvenile Hall;

(iv) purchase and use of modern emergency equipment.

(s) Emergency medical procedures at Central Juvenile Hall shall be upgraded as follows:

(i) storage of emergency medical equipment in a manner that insures easy access to such equipment by medical personnel and all to the staff at Central Juvenile Hall;

(ii) training of all staff in specialized emergency medical procedures, including cardiopulmonary resuscitation;

(iii) maintenance of reference materials concerning medical treatment of juveniles suffering from drug withdrawal.

(t) The medical library at Central Juvenile Hall shall be upgraded to include all standard, up-to-date medical reference texts, and medical periodicals, including

those dealing with first aid and administration of drugs.

(u) Guidelines for coordination of medical treatment and mental health care at Central Juvenile Hall with administration of Central Juvenile Hall by the probation department shall be established and implemented. Such guidelines shall insure that movement, transfer, or other orders by probation officers concerning juveniles at Central Juvenile Hall do not interfere with medical or mental health treatment of any juvenile.

(v) No prescription medication or drugs shall be administered to a juvenile unless a physician prescribes such drug or medication for the specific juvenile after the physical examination of the juvenile and diagnosis of the juvenile's condition by the physician.

4. Psychiatric Care: (a) Each

juvenile shall be given the oportunity to consult with a psychiatrist and/or psychologist as soon after his request to do so as is possible and in no event more than 12 hours after the time of that juvenile's request. Each juvenile shall be provided the opportunity for continuing consultation with a psychiatrist and/or psychologist to the extent desired by the juvenile and deemed professionally appropriate by the psychiatrist or psychologist. There shall be a minimum of three psychiatrists or psychologists on duty at Central Juvenile Hall at all times during the evening hours.

(b) Each juvenile who is being held subject to an adjudication of delinquency shall be entitled either to be released within 72 hours of that adjudication or to receive treatment in accordance with an individualized treatment plan

prepared by a multi-disciplinary team of professionals including a psychiatrist or psychologist, a pediatrician, a recreational specialist, an educational specialist, and the juvenile's counselor. This team shall assess each juvenile's need and devise a treatment plan to effectuate his rehabilitation. If the treatment needs of a juvenile cannot be met at Central Juvenile Hall, that juvenile must be either released or transferred to a placement where those needs can be met.

Compliance with the provisions of this order shall be made within 60 days of the date of filing this order. Defendants shall report to the Court within 30 days their progress toward compliance.

In the event defendants are not in full compliance with this order within 60 days, they shall cease housing or detaining any juveniles at CJH until full com-

pliance with the order is accomplished.

Plaintiffs will prepare findings of fact, conclusions of law and judgment as required by Local Rule 7.

Dated: April 11, 1979.

/s/Manuel L. Real
MANUEL L. REAL
United States District Judge

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>CLARENCE E. CABELL, in his capacity as Los Angeles County Acting Chief Probation Officer; JOHN SARCHETT, in his capacity as Superintendent of Los Angeles County Central Juvenile Hall; SIDNEY DWOSKIN, in his capacity as Chief Physician of Los Angeles County Central Juvenile Hall; BAXTER WARD, PETER F. SCHABARUM, KENNETH HAHN, | NO. CV 75 3305 R<br><br>PLAINTIFFS' PROPOSED JUDGMENT (Modified)<br><br>Entered August 6, 1979 |

JAMES HAYES, and EDMUND E. EDELMAN, in their capacities as Supervisors of the County of Los Angeles,

Defendants.

This action came on for trial before the Court, Honorable Manuel L. Real, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered as set forth in the Court's Order, filed April 12, 1979, and the Court having made Findings of Fact and Conclusions of Law:

It is hereby ORDERED, ADJUDGED and DECLARED:

That Plaintiff, Dwight Manney and the class he represents, which consists of all male juveniles incarcerated at Los Angeles County Juvenile Hall (hereinafter CJH or Central Juvenile Hall) who are alleged to be or have been found

to be persons described by California Welfare and Institutions Code § 602, shall have declaratory judgment against the defendants, Clarence E. Cabell, acting Chief Probation Officer of Los Angeles County at the time this action was filed, and his successors in office, Defendant John Sarchett, Superintendent of Central Juvenile Hall at the time this action was filed and his successors in office, Defendant Sidney Dwoskin, the Chief of Health Services for the Los Angeles County Probation Department at the time this action was filed and his successors in office, Defendant Eugene Weiner, Chief Physician of the Los Angeles County Probation Department and his successors in office, and Defendants Baxter Ward, Peter Schabarum, Kenneth Hahn, James Hayes, and Edmund E. Edelman, members of the Board of Supervisors of the County of Los Angeles and

their successors in office as follows:

1. That detention of more juveniles at CJH than allowed by the maximum rated capacity of that institution as established by the California Youth Authority, exclusive of any beds in the infirmary or any segregation unit, or the use of CJH in any way that requires any juvenile to sleep, rest or stay on the floor at any time unless so prescribed by a medical doctor because of the physical or mental condition of the juvenile, is violative of United States and California Constitutional provisions proscribing cruel and unusual punishment and of California Welfare and Institutions Code § 202 (formerly § 502) requiring each juvenile at CJH to receive custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

2. That hygienic practices at CJH which prevent each juvenile housed there from taking a shower once a day with enough time to clean and refresh himself, or which prevent maintenance of privacy during the shower or do not allow for the juvenile to shower are violative of United States and California Constitutional provisions proscribing cruel and unusual punishment and California Welfare and Institutions Code § 202 (formerly § 502) requiring each juvenile at CJH to receive custody care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

3. That hygienic practices at CJH which deny any juvenile housed there direct an immediate access, without the necessity of requesting permission, to a toilet during all times of the day or night in which he is required to be in his

room are violative of United States and California Constitutional provisions proscribing cruel and unusual punishment and California Welfare and Institutions Code § 202 (formerly § 502) requiring each juvenile at CJH to receive custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents;

4. That the medical and psychiatric care provided to juveniles at CJH is violative of the United States and Califronia Constitutional provisions proscribing cruel and unusual punishment and California Welfare and Institutions Code § 202 (formerly § 502) requiring that each juvenile housed at CJH receive custody, care and discipline, as nearly as possible equivalent to that which should have been given by his parents.

IT IS FURTHER ORDERED AND

ADJUDGED that Defendants Clarence E. Cabell, acting Chief Probation Officer of Los Angeles County, and his successors in office, Defendant John Sarchett, Superintendent of Central Juvenile Hall at the time this action was filed and his successors in office, Defendant Sidney Dwoskin, the Chief of Health Services for the Los Angeles County Probation Department at the time this action was filed and successors in office, Defendant Eugene Weiner, Chief Physician of the Los Angeles County Probation Department and his successors in office, and Defendants Baxter Ward, Peter Schabarum, Kenneth Hahn, James Hayes, and Edmund E. Edelman, members of the Board of Supervisors of the County of Los Angeles and their successors in office shall have judgment against plaintiff Dwight Manney and the class he represents on the plaintiff's claims of

federal and state constitutional and state statutory deficiency in the operation of CJH with respect to segregation, movement and classification practices, general cleanliness and hygienic practices, maintenance of a juvenile's dignity and self-respect, education, recreation, visiting, mail, telephone, discipline and staffing (except medical) policies.

IT IS FURTHER ORDERED AND ADJUDGED that defendants and their successors in office shall comply with the following:

5. Overcrowding: (a) The total number of juveniles housed at CJH shall not exceed the maximum rated capacity of that institution as established by the California Youth Authority.

(b) Beds in the infirmary or any segregation unit shall not be included in determining the total maximum

rated capacity.

(c) No juvenile shall be required to sleep, rest or stay on the floor at any time except when so prescribed by a medical doctor because of the physical or mental condition of the juvenile.

6. Hygiene: (a) Each juvenile housed at CJH shall be permitted to take a shower at least once each day. Time shall be allowed the juvenile to clean and refresh himself which shall, in no event, be less than five minutes.

(b) Each shower shall have a divider, screen or other device to maintain privacy and shall have controls to permit each juvenile to regulate the flow and temperature of water during his shower.

(c) No juvenile shall be assigned to a room or dormitory which does

not have its own toilet unless procedures are established to enable a juvenile direct and immediate access, without the necessity of requesting permission, to a toilet during all times of the day or night in which he is required to be in his room.

7. Medical: (a) Prior to admission to Central Juvenile Hall, all juveniles shall be given a medical screening conducted in private by trained medical personnel. This admission medical screening consists of:

(i) A complete review of the existing medical records of each juvenile admittee to determine possible medical needs for that juvenile;

(ii) Preparation of a complete medical history of the juvenile, and if

possible from his family, and physician or other professionals familiar with juvenile's medical background;

(iii) Routine testing for common diseases such as tuberculosis, anemia, sickle cell disease, gonorrhea and hepatitis, and if indicated by the juvenile's condition testing to determine whether the juvenile is under the influence of drugs or alcohol or in a drug, alcohol, or substance in need of medical treatment for that condition;

(iv) Referral to a physician of any juvenile who exhibits a condition

or illness requiring treatment.

(b) Each juvenile admitted to Central Juvenile Hall shall be given a complete private physical examination by a physician within 48 hours of the juvenile's admission. The physician conducting the examination required by this paragraph shall:

(i) Review and supplement as necessary of the medical history of the juvenile prepared in the admission screening process in accordance with paragraph 7(a) of this judgment;

(ii) Determine whether the juvenile has been properly immunized for diptheria, tetanus, and polio

and provide such immunization if necessary;

(iii) Review results of tests administered at admission screening examination, pursuant to paragraph 7(a) (iii) of this judgment;

(iv) Prepare and provide for implementation of a medical treatment and care program to meet the individual medical needs of each juvenile, or note in the medical records that the juvenile does not need medical care.

(c) Sick call shall be held at least three times daily, according to the following procedures:

(i) Sick call shall

be conducted in private by a trained and qualified nurse, who shall be given adequate time to complete sick call rounds and records medical information as necessary on those rounds and shall record such information promptly and completely;

(ii) Sick call attendance shall be at the request of the juvenile to be made according to sign-up procedures to be established by defendants and no probation officer or other staff member shall have the power to deny such attendance;

(iii) The names and

medical records of those juveniles requesting sick call shall be made available to the nurse conducting that sick call in advance of the nurse's rounds, and each such juvenile's medical records shall be taken on sick call rounds;

(iv) A probation officer shall be available to accompany and assist the nurse on all sick call rounds;

(v) Defendants shall establish written guidelines to govern the nurse's determination at the time of sick call whether a juvenile shall be referred to a

physician or given medication;

(vi) Upon a nurse's determination that a juvenile should be referred to a doctor, a doctor's examination and treatment of the juvenile shall be provided;

(a) immediately, in the case of an emergency;

(b) within four hours in the case of a non-emergency.

(d) The infirmary and rooms in which sick call, doctor's clinics, or other medical examination, treatment or procedures are conducted shall be maintained in a sanitary and medically adequate manner, and shall have available equipment and facilities that are adequate for such

examination, treatment and procedures. The purchase of new equipment, the remodeling of facilities, or the construction of new facilities shall be undertaken as necessary to accomplish this purpose.

(e) Written guidelines for determining when a probation officer shall bring a juvenile to the infirmary shall be established.

(f) A list shall be prepared of those medical conditions that can be properly treated by personnel and facilities available at the Central Juvenile Hall infirmary and those which cannot be so treated. The lists required to be compiled by this paragraph shall be posted in the infirmary and available to all personnel.

(g) A communication system shall be installed in the infirmary by which juveniles in each room of the

Central Juvenile Hall infirmary can summon nurses or other infirmary personnel.

(h) A regular schedule shall be established and implemented to assure frequent infirmary rounds by nurses to check the condition of patients in the infirmary.

(i) Appropriate and frequent cleaning schedules shall be established and implemented for all rooms and areas in the Central Juvenile Hall Infirmary, including twice daily thorough disinfecting floor mopping, toilet and sink cleaning, and dusting of rooms, and all steps necessary to eliminate such unsanitary conditions from the infirmary as ants, mice.

(j) Appropriate hygienic standards shall be established and implemented for the infirmary at Central

Juvenile Hall that provide adequate personal hygiene facilities for patients, use of plasticized coverings for beds, and training of housekeeping staff in specialized methods of cleaning infirmary areas.

(k) A medical records system at Central Juvenile Hall shall be established and implemented that insures:

(i) maintenance of complete, organized, and orderly medical records for each juvenile;

(ii) minimization of the loss of medical records and complete duplicate replacement of lost records at Central Juvenile Hall;

(iii) maintenance of the confidentiality of all juvenile medical records and access to such records

by medical personnel only;

(iv) maintenance of accurate and current records on the administration of drugs and medication to each juvenile at Central Juvenile Hall;

(v) regular audit and review of the quality and adequacy of medical care provided at Central Juvenile Hall.

(l) Procedures shall be established and implemented to assure follow-up medical care for juveniles who leave Central Juvenile Hall suffering from illnesses or conditions discovered, noted, or treated while the juvenile is detained at Central Juvenile Hall. These procedures shall include:

(i) review of each

juvenile's medical chart and records prior to each juvenile's departure from CJH;

(ii) notification of each juvenile, or his parents or guardian concerning any medical conditions discovered, noted, or treated while at CJH, and treatment recommended for the condition.

(m) A plan for changes in staff policy and procedure at Central Juvenile Hall shall be established and implemented to insure:

(i) employment of sufficient full-time, fully qualified nurses for the health needs of every juvenile in Central Juvenile Hall;

(ii) employment of quali-

fied supervisory nursing personnel sufficient to fill all supervisory nursing positions at Central Juvenile Hall;

(iii) scheduled overlap of nursing shifts at Central Juvenile Hall and routine communications between nurses on such concerning the conditions of patients;

(iv) regularly scheduled meetings or case-conferences between nurses and doctors and psychiatrists at Central Juvenile Hall to provide for discussion of patients problems;

(v) use by nursing

personnel at Central Juvenile Hall of a revised nursing manual that comports with currently accepted nursing practices to govern nursing practices at Central Juvenile Hall;

(vi) training of Central Juvenile Hall probation staff concerning the possible effects of drugs on juveniles.

(n) A comprehensive plan for the prevention and control of communicable diseases at Central Juvenile Hall shall be established and implemented. Such plan shall include:

(i) A routine procedure by which probation and medical personnel can and

must immediately report all cases of communicable diseases at Central Juvenile Hall to the County Department of Health Services and its Acute Communicable Disease Control Department;

(ii) Procedures and facilities to isolate those with a communicable disease from those susceptible to the disease, including construction of scrubbing vestibules for medical personnel in isolation rooms, and methods or facilities to insure against placement of communicable diseased patients in regular, non-isolation rooms.

(iii) Procedures for

sanitation of line unit rooms immediately after transfer of communicable diseased patients from such rooms.

(iv) Integration of communicable disease prevention and control safeguards into population and movement procedures at Central Juvenile Hall.

(v) Establishment of contingency procedures for controlling the spread of communicable diseases at Central Juvenile Hall.

(o) Procedures to govern administration of medication at Central Juvenile Hall shall be established and implemented. Such procedures shall include:

(i) methods to verify identification of each juvenile to whom medication is given;

(ii) procedures to insure prescribed medication is given to juveniles who miss regularly scheduled administration of their prescription because they are temporarily absent from Central Juvenile Hall for any reason;

(iii) a written formularly provided to each physician at Central Juvenile Hall that lists approved drugs stocked there, the approved uses of those drugs, and the preferred drug for common

specific conditions;

(iv) maintenance of a complete drug and medication profile for each juvenile at Central Juvenile Hall;

(v) procedures to insure accurate and complete recordation of drug and medication administration at Central Juvenile Hall and allow for review, audit and upgrading of the system of administration of drugs at Central Juvenile Hall.

(p) Special diets shall be provided to those juveniles who have a medical need for such diets. Defendants shall:

(i) employ a dietician to develop a special dietary program for

Central Juvenile Hall;

(ii) provide training for cooks in the preparation of special diets;

(iii) establish and implement procedures for communication between medical and dietary personnel concerning juveniles who need special diets.

(q) Laboratory equipment and procedures at Central Juvenile Hall shall be modernized and upgraded to insure that:

(i) the laboratory will be capable of handling all tests required to provide adequate medical care to juveniles;

(r) Medical equipment at Central Juvenile Hall shall be upgraded as follows:

(i) modernization of equipment in the physiotherapy room to meet present community standards, including repair or replacement of specialized baths and provisions of examination tables;

(ii) purchase and use of modern x-ray equipment for Central Juvenile Hall;

(iii) purchase and use of electrocardiograph equipment for Central Juvenile Hall;

(iv) purchase and use of modern emergency equipment.

(s) Emergency medical procedures at Central Juvenile Hall shall be upgraded as follows:

(i) storage of emergency medical equipment in a manner that insures easy access to such equipment by medical personnel and all to the staff at Central Juvenile Hall;

(ii) training of all staff in specialized emergency medical procedures, including cardiopulmonary resuscitation;

(iii) maintenance of reference materials concerning medical treatment of juveniles suffering from drug withdrawal.

(t) The medical library at Central Juvenile Hall shall be upgraded to include all standard, up-to-date medical reference texts, and medical periodicals,

including those dealing with first aid and administration of drugs.

(u) Guidelines for coordination of medical treatment and mental health care at Central Juvenile Hall with administration of Central Juvenile Hall by the probation department shall be established and implemented. Such guidelines shall insure that movement, transfer, or other orders by probation officer concerning juveniles at Central Juvenile Hall do not interfere with medical or mental health treatment of any juvenile.

(w) No prescription medication of drugs shall be administered to a juvenile unless a physician prescribes such drug or medication for the specific juvenile after the physical examination of the juvenile and diagnosis of the juvenile's condition by the physician.

8. Psychiatric Care:

(a) Each juvenile shall be given the opportunity to consult with a psychiatrist and/or psychologist as soon after his request to do as is possible and in no event more than 12 hours after the time of that juvenile's request. Each juvenile shall be provided the opportunity for continuing consultation with psychiatrist and/or psychologist to the extent desired by the juvenile and deemed professionally appropriate by the psychiatrist or psychologist. There shall be a minimum of three psychiatrists or psychologists on duty at Central Juvenile Hall at all times during the evening hours.

(b) [Modified by court interlineation]

9. Administrative Remedy:

(a) When any juvenile has information which he believes indicates a violation of this judgment, he may set forth that information in writing to the Facility Director by delivering it to a Deputy Probation Officer on duty in his housing unit. An investigation of any such complaint shall be made as soon as reasonably practicable, and within five (5) days after the juvenile delivers the written statement to the Deputy Probation Officer, the Facility Director shall cause a written reply to be given to the juvenile indicating the result of the investigation and what, if any, action has been taken to prevent further violations of the Judgment.

(b) Absent unusual circumstances indicating compelling reasons why following this procedure would result

in substantial prejudice to the juvenile, no petition for an order of contempt or violation of the Judgment shall be entertained until the juvenile first complies with this administrative procedure. In construing any petition for contempt for violation of the Judgment, the Court shall consider the appropriateness of any action taken by the Facility Commander in response to information provided him in accordance with this procedure.

(c) This administrative procedure shall be included in the oral and written orientation materials given to each juvenile upon admission, in English and/or Spanish where indicated. Upon request, juveniles shall be provided writing materials necessary to comply with this procedure.

(d) The Judgment and this

Supplemental Judgment shall be conspicuously posted in each housing area for a period of six (6) months and thereafter shall be posted or on file in the facilities library and available upon request. Copies of all written statements by juveniles pursuant to this procedure and the replies thereto shall be available for inspections by plaintiffs' attorneys or the juvenile's attorney upon request during normal business hours.

10. Emergency Exception: In the event the Facility Director has reasonable cause to believe that there exists facts showing a serious imminent threat to the safety of juveniles and/or other persons that would occur if any of the provisions of the judgment were enforced, and there is insufficient time to seek a formal modification or exception to the provisions of the judgment, he may

temporarily suspend for up to 72 hours those provisions of the judgment as may be necessary to avoid or reduce such serious and imminent threat providing that he submits a statement in writing to this Court setting forth what he has done and why he has done it as soon as practicable within said 72 hours, with a copy to plaintiff's counsel.

IT IS FURTHER ORDERED AND ADJUDGED that compliance with the provisions of this order shall be made within sixty (60) days of April 12, 1979, and that defendants shall report to the Court within thirty (30) days of April 12, 1979, their progress toward compliance.

IT IS FURTHER ORDERED AND ADJUDGED that in the event defendants are not in full compliance with this judgment within sixty (6) days, they shall cease housing and detaining any juveniles at

Central Juvenile Hall until full compliance with the judgment is accomplished.

IT IS FURTHER ORDERED AND ADJUDGED that the award of reasonable costs, including attorney's fees, if any, to be made in this action shall be determined upon separate motion to this Court.

DATED: This ___ day of _____, 1979.

_____
Honorable Manuel L. Real
United States District Judge

Dated: July 20, 1979

SUBMITTED BY:

JOHN E. McDERMOTT
ROBERT T. OLMOS
PATRICIA M. TENOSO
ERICH P. WISE
ALAN RADER
WESTERN CENTER ON LAW & POVERTY, INC.

By: /s/Erich P. Wise
ERICH P. WISE
Attorneys for Plaintiffs

APPROVED OR DISAPPROVED (initial FRB)
AS TO FORM

Dated: July 20, 1979

JOHN H. LARSON
County Counsel

By: /s/Frederick R. Bennett
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| DWIGHT MANNEY, et. al., Plaintiffs, vs. CLARENCE E. CABELL, et. al., Defendants. | NO. CV 75 3305R<br>FINDINGS OF FACT AND CONCLUSIONS OF LAW<br>Entered August 6, 1979 |

This action came on for trial before the Court, the Honorable Manuel L. Real, District Judge, presiding, and the issues having been duly tried, the Court, having fully considered and basing its decision on all the evidence, exhibits, pleadings, memoranda

and other matters on file herein, makes the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a):

## FINDINGS OF FACT

### A. Los Angeles County Central Juvenile Hall And Its Population

1. This action was brought to challenge the practices and conditions of confinement at the Los Angeles Central Juvenile Hall (hereinafter "CJH"), located at 1605 Eastlake Avenue, Los Angeles, California.

2. At the time of trial, approximately 567 juveniles were confined at CJH. Approximately 180 of these juveniles were alleged to be or had been found to be persons described by California Welfare and Institutions Code, § 601. These juveniles were segregated from the

approximately 387 other juveniles housed at CJH at the time of trial who were alleged to be or had been found to be persons described by California Welfare and Institutions Code, § 602.

3. Since the trial of this action, housing of juveniles detained pursuant to § 601 of the California Welfare and Institutions Code has ceased at CJH, and the number of persons detained at CJH pursuant to § 602 of the California Welfare and Institutions Code has increased to approximately 482.

4. Juveniles confined at CJH include both those who have been determined by a court to be persons described in § 602 of California Welfare and Institutions Code and those who are being detained by the County of Los Angeles pending a hearing to make such a determination.

5. During confinement at CJH, detainees who are held pursuant to a court determination under § 602 of the California Welfare and Institutions and detainees awaiting a hearing on such determination are intermingled with each other, are treated in the same manner, and are confined under similar conditions.

6. Juveniles are confined at CJH for lengths of time that vary from a few hours to as many as five months. The average length of stay has varied at different times from 11-1/2 days to over 18. 40% of the juveniles confined at CJH stay for between those weeks and one month. The average stay for those confined more than five days is 21 to 29 days.

B. Parties

7. The named plaintiff, Dwight Manney, is a minor who was first alleged to be and was later adjudicated

to be a person described by California Welfare and Institutions Code, § 602. He was incarcerated at CJH both before and after that adjudication. Plaintiff Manney brings this action by and through Annie Mae Manney, his mother, as his next friend.

8. November 20, 1975, the Court certified a class in this action, pursuant to Federal Rules of Civil Procedure, 23(a) and 23(b)(2). That class was and continued to be composed of all male juveniles incarcerated at CJH who are alleged to be or have been found to be persons described by California Welfare and Institutions Code, § 602.

9. Defendant Clarence E. Cabell was acting Chief Probation Officer of Los Angeles County from November 20, 1974, to March 31, 1976, at which time he was replaced by his successor in office

Kenneth Fare, who, as successor in office has acted in such capacity from April 16, 1976 until the present. The (acting) Chief Probation Officer of Los Angeles County is responsible for the management, control, and supervision of CJH, for establishing and enforcing policies and practices for the care, supervision and treatment of juveniles incarcerated at CJH and for maintaining and operating CJH in a manner suitable for the confinement of minors.

10. Defendant John Sarchett was the Superintendent of Central Juvenile Hall from January 1, 1975 until March 27, 1976, when he was replaced by Herbert Lowry, who, as successor in office, acted in such capacity at CJH from on or about May 9, 1976 until the time of trial. The Superintendent of Central Juvenile Hall is responsible for the

management and control of Central Juvenile Hall, under the direction of the (acting) Chief Probation Officer, and has been delegated the authority and responsibility for establishing policies and practices at Central Juvenile Hall.

11. Defendant Sidney Dwoskin, was, at the time of trial, the Chief of Health Services for the Los Angeles County Probation Department, and in that capacity was administratively in charge of and responsible for the operation of the health care delivery system at CJH.

12. Defendant Eugene Weiner was the Chief Physician of the Los Angeles County Probation Department from January 20, 1975 until April 1, 1976 at which time he was replaced by his successor in office, Gerald Brody, who acted in such capacity from April 30, 1976 until

the time of trial. The Chief Physician was, at the time of trial, responsible for the formulation and implementation of medical policies and procedures, and for the supervision of the medical staff, including doctors and nurses at Central Juvenile Hall, and for the provision of medical care to juveniles incarcerated at Central Juvenile Hall.

13. Defendants Baxter Ward, Peter Schabarum, Kenneth Hahn, James Hayes and Edmund E. Edelman are, and at all time herein relevant, have been members of the Board of Supervisors of the County of Los Angeles. The Board of Supervisors of the County of Los Angeles is a governing body of the County of Los Angeles and as such is responsible for the allocation of funds for all county purposes.

14. At all times relevant to this action, defendants have acted under

color of the laws of the State of California.

C. General Findings On The Issues Presented

15. Many claims of constitutional deficiency in the operation of CJH were presented in this action that are not supported by the evidence. Those include: segregation, movement and classification practices, general cleanliness and hygienic conditions; maintenance of a juvenile's dignity, self-respect; education, recreation, visiting, mail, telephone, discipline and staffing (except as hereafter indicated in medical practices) policies.

16. Although not models of the ideals expressed by many sociologists of what a juvenile hall should be, all of these, individually or collectively, do not amount to violations of the protec-

tion guaranteed by the United States Constitution, the California Constitution or the California Welfare and Institutions Code.

17. Overcrowding, some hygienic practices, medical and psychiatric care, do, as disclosed by the evidence and the personal observations of the Court upon its visit to CJH amount to violations of United States and Constitutional provisions proscribing cruel and unusual punishment and California Welfare and Institutions Code § 202 (formerly § 502) requiring "custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents."

Medical And Psychiatric Care

At trial it has been shown:

18. Admission to CJH is often the first contact the County of Los

Angeles has with the juvenile admitted. Medical admission screening of juveniles at CJH does not take place until after the juvenile has been admitted into the mainstream of the CJH population.

19. The medical admission screening of juveniles at CJH is conducted by nursing personnel who are not specifically trained or qualified to perform the screening of juveniles or to take medical histories from juveniles.

20. The medical admissions screening at CJH is not performed in privacy or in a room that is equipped for medical examinations.

21. During the admission screening of juveniles at CJH, the nurse conducting the examination does not have or review medical records of the juvenile that may be available at CJH.

22. The nurse conducting

the admission screening at CJH does not take a complete or adequate medical history from the juvenile and does not attempt to contact the juvenile's family or others to secure medical information about the juvenile.

23. The medical admission screening is superficial and limited in scope. It involves weighing and measuring the juvenile, checking his vision, blood pressure, temperature, pulse, and appearance, in addition to a limited medical history. The nurse asks only a small number of general questions of the admittee.

24. Routine testing for tuberculosis, gonorrhea, anemia, sickle cell trait and other common diseases are not given at the admission screening.

25. Because of the inadequate nature of the medical admissions

screening procedures, facilities, and staff at CJH, the admission screening nurse is unable to assess adequately the immediate medical needs of the juveniles admitted to CJH or to determine what medical care must be provided to such juveniles in order to avoid harm to that juvenile or others detained at CJH.

26. Physical examinations of juveniles at CJH do not occur until three to five days after admission of the juveniles to CJH, and sometimes not until at least ten days after initial detention.

27. Physical examinations are not provided to juveniles detained at CJH who have been examined within the past year.

28. No mental status evaluation is provided juveniles detained at CJH.

29. Privacy of juveniles

is not assured during the physical examination at CJH.

30. The scope of the physical examination provided juveniles at CJH is not sufficient to assess adequately the medical needs of juveniles detained at CJH or to determine what medical care must be provided to the juveniles in order to avoid harm to the juveniles examined or to others detained at CJH.

31. Sick call at CJH is scheduled but does not always occur three to four times daily. Sick call is conducted by a nurse who visits certain of the housing units at CJH.

32. Medication is dispensed at sick call, and identification of the juvenile to be given medication is visual and oral only.

33. The nurse conducting sick call rounds does not have medical

charts of juveniles at the time of sick call assessment.

34. The nurse conducting sick call often does not have adequate time to transfer pertinent medical information obtained during sick call to the medical records of a juvenile.

35. The facilities at which sick call is conducted are inadequate to allow privacy or proper examination of juveniles during sick call.

36. Attendance at sick call at CJH is discretionary with counselors in the living units.

37. The ability of juveniles detained at CJH to see a doctor concerning their medical condition is dependent on the assessment of that medical condition by the sick call nurse and the transfer of information from the nurse on sick call rounds to the medical records or

a physician at CJH.

38. There are no guidelines governing the nurses' determination at sick call that a juvenile will or will not see a doctor, and there is no system to guarantee access to a doctor even when the nurse makes such a determination.

39. The facilities, equipment and medical files that are available to the doctor to whom referrals of juveniles at CJH are made after sick call are not adequate to allow for complete and accurate assessment of the juvenile's medical needs.

40. The sick call procedures and facilities at Central Juvenile Hall are not adequate to provide prompt and adequate attention to the medical needs of juveniles detained at Central Juvenile Hall.

41. The infirmary at CJH

houses juveniles who are ill. When it becomes overcroweded, ill juveniles are placed in other units at CJH.

42. The heating and cooling system in the infirmary provides adequate temperature control and air circulation.

43. The infirmary at CJH is unsanitary and cleaning procedures are inadequate to maintain necessary sanitary conditions.

44. There is no system in the infirmary for communication between the patient rooms in the infirmary which are locked, and staff on duty in the infirmary.

45. The nurses in the infirmary do not make frequent and regular rounds to observe or check on juveniles in the infirmary and juveniles do not have immediate access to medical staff when

needed in the infirmary.

46. There is no posted list of conditions treatable at the infirmary at CJH.

47. The facilities, conditions and procedures in the infirmary at CJH are inadequate to enable staff to provide prompt and necessary medical care to juveniles housed there.

48. The medical records system at CJH is one of the major deficiencies in the delivery of medical care to juveniles detained there.

49. Medical files of juveniles at CJH are frequently lost, and when files are lost, new or duplicated files are established which may not include information from the lost files which is necessary to allow the medical needs of the juveniles to be met.

50. Medical records at

CJH lack completeness necessary to meet the medical needs of juveniles detained at CJH. The records often do not include full and appropriate identification or medical histories of the juveniles, they often lack notation of a recent medical history or physical examination, they often do not record diagnosis and the course of treatment of existing medical conditions, and they are often incomplete in the charting of drug or medication treatment or testing for medical conditions.

51. The confidentiality of all juvenile medical records is not insured at CJH and probation staff have access to such records.

52. The system of identification and maintenance of medical records is by name and birth date only and is not properly organized to allow for

adequate matching of records with the juveniles to be treated.

53. There is not regular audit and review of the medical records system at CJH.

54. The disorganized and incomplete medical records system at CJH does not allow for the adequate treatment of the medical needs of juveniles detained there.

55. Medical records of juveniles are not routinely reviewed prior to the juveniles' departure from CJH, and no attempt is made to provide the juveniles' family, probation officer or juvenile about medical conditions discovered or treated at CJH or about continuing treatment that may be required.

56. Medical and probation staff at Central Juvenile Hall are inadequate to provide attention to the medical

needs of juveniles detained there. The administration of the medical system does not provide competent direction, organization, or management of the medical system at Central Juvenile Hall. There is chronic understaffing of nurses and a lack of sufficiently trained or quality nurses. Physician positions are also understaffed.

57. Training of nursing staff and probation staff at CJH in the medical needs of juveniles is inadequate.

58. There is no overlap in nursing shifts at CJH to allow exchange of information about the conditions of particular juveniles.

59. The nursing manual used to govern nursing practices at CJH is incomplete, and does not allow nurses to provide care to meet the medical needs of juveniles.

60. There are no adequate

procedures or facilities at CJH to allow for identification, treatment and control of communicable diseases.

61. Procedures for the administration and provision of medication at CJH are indequate to insure medication is provided in a manner and at a time needed by juveniles detained there. Identification of juveniles for medication and dosage is done by the nurse visually at sick call, there is no adequate formulary, and there is no procedure for insuring proper and timely medication for juveniles who may be temporarily absent from CJH.

62. The medical records system at CJH does not allow for maintenance of an organized drug or medication treatment profile for each juvenile detained there.

63. Special diets necessary to meet the medical needs of juveniles

detained are not available at CJH.

64. The laboratory equipment and procedures at CJH do not provide for all testing necessary to assess and meet the needs of juveniles detained there, and do not provide for return of testing results in the prompt manner necessary to provide medical treatment to juveniles.

65. Medical equipment in use at CJH is not adequate to meet the medical needs of juveniles detained there. It does not include examining tables in the physiotherapy room, modern x-ray equipment, electrocardiograph equipment, or modern emergency equipment.

66. Emergency equipment and procedures at CJH are not adequate to provide emergency care to meet the needs of juveniles. Equipment is not easily accessible to staff and training in

emergency procedures is not complete.

67. Standard and up-to-date medical publications and periodicals are not available to medical staff at CJH. This substantially affects the ability of staff at CJH to meet the medical needs of juveniles detained at CJH.

68. There is a lack of coordination in the provision of medical care to juveniles at CJH which seriously affects the ability to meet the medical needs of juveniles detained there. Probation staff often interferes with provision of medical care and often does not follow medical orders concerning juveniles. Quality control such as regular chart audits or case conferences is lacking. Movement of juveniles from CJH to other facilities interferes with on-going medical treatment. Much of the care is provided and many of the decisions about how

care will be provided are made on an ad hoc basis without systematic protections against conflicting or injurious policies.

69. Mental health care available to juveniles at CJH is extremely limited. No psychological evaluation is provided juveniles during their detention. Access to a psychiatrist or psychologist is not provided to all juveniles who request or need such consultation. No continuing or on-going consultation is provided as needed. Suicidal juveniles are often isolated in the XY unit which is not set up to prevent to provide the means, staff, or procedures necessary to prevent suicide.

70. The defendants do not provide counseling, psychiatric care or other treatment to juveniles detained at CJH on an individualized basis or according to an individualized plan.

71. The deficiencies in the medical system at CJH as found in Paragraphs 18 through 70 above, render that system inadequate to meet the serious medical and psychiatric needs of juveniles detained there. These deficiencies and their affects are known to defendants, and have existed for a substantial period of time.

72. The changes made in the administration and provision of medical care at CJH since trial are not sufficient to remedy the inadequacies found above or to guarantee that such inadequacies will recur.

Showers

73. The time allowed juveniles to take showers is two to three minutes daily.

74. There exist no facilities in the institution's shower room

to maintain the privacy of individual juveniles.

75. The institution's showers do not have controls which would allow a juvenile to control either the flow or temperature of water.

75a. The short time period allowed for showers, the lack of privacy during showers, and the inability of juveniles to control the flow or temperature of water during showers is not necessary to maintain safety or security at Central Juvenile Hall.

75b. The short time period allowed for showers, the lack of privacy during showers, and the inability of juveniles to control the flow or temperature of water during showers are not practices of care or custody that should be imposed on juveniles by their parents.

Toilets

76. Certain juveniles are housed in locked rooms which do not have toilet facilities. These juveniles can make use of toilet facilities when in their rooms only upon obtaining the permission of institution staff.

77. Juveniles have been required to wait substantial periods of time to make use of toilet facilities. Juveniles have, as a result, been required to urinate in their rooms or out of their windows.

77a. The practice of denying juveniles adequate access to toilets at night is not necessary to the maintenance of security or safety at Central Juvenile Hall.

77b. The practice of denying juveniles adequate access to toilets at night is not a practice of care or

custody that should be imposed on juveniles by their parents.

Lighting And Ventilation

78. The lighting in rooms at Central Juvenile Hall is sufficient for the needs of the juveniles in those rooms.

79. There is adequate ventilation at Central Juvenile Hall and variations in temperature in the facility have not been excessive.

Nutrition

80. The food served juveniles is clean, nutritionally balanced and adequate for the needs of juveniles other than as found in paragraph 63 of these findings.

Sanitation

81. Juveniles are provided rooms and bedding that are clean and sanitary.

82. There is not substantial or serious vermin or insect infestation at Central Juvenile Hall.

Segregation

83. Juveniles who are homosexual or who are actual or potential victim of homosexual attack are segregated from the normal population at the institution.

84. On some occasions, juveniles who are actual or potential victims of homosexual attack are placed in the same unit with juveniles who are homosexual.

85. Juveniles segregated from the normal population because they are homosexual or are actual or potential homosexual victims receive substantially the same rights and benefits as other juveniles in the institution.

86. Juveniles accused of

homicide are assigned upon admission to the Intensive Care Unit.

87. Juveniles who attempt to commit suicide or perform acts suggesting suicidal tendencies are placed in the Intensive Care Unit.

88. Certain juveniles are placed in the Intensive Care Unit for disciplinary purposes.

89. Juveniles in the Intensive Care Unit receive substantially the same rights and benefits as do other juveniles.

Overcrowding

90. A preliminary injunction prohibiting overcrowding of Central Juvenile Hall was entered by the Court in this action on May 10, 1976. That injunction has remained in force during the pendency of this action, as modified by the Court's Order of December 29, 1976.

91. The capacity of Central Juvenile Hall is limited by the number of beds and amount of living space available in the residential units at Central Juvenile Hall.

92. The maximum rated capacity at Central Juvenile Hall is a capacity approved by the California Youth Authority, an agency of the State of California.

93. The maximum rated capacity at Central Juvenile Hall, and for each unit within Central Juvenile Hall, as approved by the California Youth Authority, varies from time to time with the deletion or addition of approved bed space.

94. The maximum rated capacity of Central Juvenile Hall includes the infirmary and the Intensive Care Unit (XY) within and as part of Central Juvenile Hall's maximum rated capacity for

housing juveniles who are members of plaintiff's class.

95. The infirmary is a specialized area within Central Juvenile Hall, used by Defendants to provide medical care to members of the plaintiff class. Its maximum rated capacity is 19.

96. The Intensive Care Unit (Unit XY or lockup) is a specialized area within Central Juvenile Hall, used by Defendants for the incarceration of members of the plaintiff class who Defendants deem to be in need of discipline and/or segregation from the general inmate population at Central Juvenile Hall. Its maximum rated capacity is 40.

97. Between March 22, 1976 and April 9, 1976, prior to entry of the preliminary injunction in this action, Defendants regularly assigned to Central

Juvenile Hall, on a daily basis and as more fully described in the Findings of Fact and Conclusions of Law filed by this Court on May 10, 1976, more than the number of juveniles in plaintiff's class allowed under the maximum rated capacity for Central Juvenile Hall or for particular units at Central Juvenile Hall.

98. Defendants have in the past assigned members of plaintiff's class to sleep in the infirmary, although these juveniles were not in need of medical care or attention, because the living units at Central Juvenile Hall to which these juveniles were assigned exceeded the maximum rated capacities for such units.

99. Defendants have in the past assigned members of plaintiff's class to sleep in the Intensive Care Unit (Unit XY or lockup), although these juveniles were not in need of discipline or

segregation from the general inmate population, because the living unit(s) at Central Juvenile Hall to which such juveniles were assigned esceeded the maximum rated capacit(ies) for such unit(s).

100. Defendants have in the past given mattresses to members of plaintiff's class and assigned them to sleep on the floor at Central Juvenile Hall because the living unit(s) to which such juveniles were assigned exceeded the maximum rated capacit(ies) for such unit(s).

100a. The practices of housing juveniles in the infirmary who are not in need of medical care, of housing juveniles in the Intensive Care Unit who are not in need of discipline, and of requiring juveniles to sleep on the floor at Central Juvenile Hall are not necessary to maintain safety or security at

Central Juvenile Hall and are not practices of care and custody which should be imposed on juveniles by their parents.

Movement

101. The movement of juveniles between facilities or to institutions other than Central Juvenile Hall does not affect the conditions of confinement at Central Juvenile Hall.

102. The movement of juveniles to or from Central Juvenile Hall is not excessive.

103. The movement of juveniles to or from CJH does not result in any significant harm or injury to juveniles at CJH.

Classification

104. Juveniles detained at CJH are classified and assigned to housing units generally on the basis of age, sophistication, and size.

105. Generally, juveniles are classified and assigned to housing units as follows:

a. CYA referrals -- 16-18 are housed together, and the less sophisticated among this group are housed separately.

b. The younger 15-16 year-old juveniles awaiting CYA commitments and parole violators are housed together.

c. The less sophisticated, less delinquently orientated minors between 14 and 16 are housed together.

d. The young, unsophisticated juveniles between 8 and 14 are housed together.

e. The more sophisticated younger juveniles between 14 and 16, or repeaters in this age group are

housed together.

106. The individual character and nature of each individual juvenile is considered in determining where that juvenile shall be housed.

107. Juveniles do not fit in where originally assigned are later transferred to other more appropriate units.

108. Attempts are made to separate juveniles who are in rival gangs.

109. Juveniles are not separated according to their status as post-adjudication or pre-adjudication.

110. The classification of juveniles for housing purposes as described above is appropriate and rational.

Institutional Procedures

111. Juveniles are not required to participate in work details.

112. Juveniles are not

required to remain silent in their passage through the halls of the institution.

113. Juveniles are required to wear shoes or clothing issued by the institution.

114. Juveniles are allowed sufficient time to complete their meals.

115. Juveniles are allowed to retain with them sufficient items of personal property to meet their needs.

Education and Recreation

116. Juveniles participate in school programs at Central Juvenile Hall sufficient to meet their educational needs.

117. Juveniles participate in recreational programs of sufficient length and variety to meet their needs for recreational and physical activity.

Visiting, Mail and Telephones

118. Visitation by parents and legal guardians is regularly allowed each Sunday, from 1:00 p.m. to 4:00 p.m., and on weekdays immediately following a juvenile's court hearing. Visiting by other person or under other circumstances is allowed upon obtaining special permission.

119. Mail sent by juveniles to their attorneys and mail sent by attorneys to their clients in the institution is neither read nor censored. Other mail is opened in the presence of the juvenile when there is suspicion of contraband.

120. Parents or guardians and attorneys are notified within a reasonable time if a juvenile has been transferred to another facility.

121. Juveniles are allowed

to telephone their attorney, employer and part upon admission. Other use of the telephone by juveniles is determined at the discretion of Central Juvenile Hall personnel.

Religious Services

122. Juveniles are afforded an adequate opportunity to attend religious services.

Discipline

123. Juveniles receive daily conduct grades which determine the juveniles' place on a "merit ladder." Privileges are distributed based on a juvenile's place on the merit ladder.

124. The confinement of a juvenile in his room is used on occasion, as a means of discipline.

125. Juveniles are, on occasion, transferred to the Intensive Care Unit as a means of discipline.

126. Each juvenile is given an orientation to the institution's rules and disciplinary and grievance procedures upon admission.

127. Discipline through daily grades and confinement to a juvenile's room is imposed at the discretion of institution staff.

128. Juveniles may be transferred to the Intensive Care Unit for disciplinary purposes at the discretion of institution staff in emergency situations. Absent emergency circumstances, institution procedures require that juveniles not be transferred to the Intensive Care Unit for disciplinary purposes until they have a conference with their counselor.

129. There is a grievance procedure available to juveniles to be used regarding disciplinary actions which

have been taken against juveniles.

Probation Staff

130. The ratio of daytime staff to juveniles is one to ten in most units and one to seven in Unit J between the hours of 6 a.m. to 10 p.m.

131. At night the ratio of staff to juveniles is one to twenty.

132. There are adequate numbers of staff at CJH to deal with emergencies and day to day routines at CJH.

133. The minimum educational and work experience requirements for staff at CJH require graduation from an accredited college and adequate further work experience or education to insure qualified staff.

134. The experience and educational qualifications of staff who actually work at CJH satisfy the requirements described in Paragraph 133, supra.

135. Prior to employment as staff at CJH, personnel are provided with 40 hours of off-post training in their duties at CJH.

136. Training of probation staff is also available in problem solving, basic report writing, restraint training, supervisor training, basic first aid, and CPR.

137. Seminars are periodically given to staff to supplement their training in how to deal with suicidal, homosexual or aggressive juveniles.

138. An adequate number of spanish-speaking staff in the boys residential units at Central Juvenile Hall.

140. The staffing patterns, qualifications, and training of all staff at CJH meet all requirements of state law and are adequate to meet the staff needs and rights of both juveniles

at CJH and the security and other interests of CJH.

Dignity and Self-Respect

141. Juveniles are asked to be quiet during movements from recreation fields, to and from the day room and to and from school, and while meetings are being held or instructions given.

142. The requested silence is not a rigidly enforced rule.

143. Requiring juveniles to be quiet during movements or meetings is a reasonable means of maintaining order and safety in CJH.

144. Juveniles at CJH are not allowed to wear their own clothing or shoes while at CJH.

145. Juveniles are provided with clean and fitted clothing, night gowns, and shoes upon their admission to CJH.

146. Undergarments provided juveniles at CJH are changed daily, and outer garments are changed once a week, or more often if necessary.

147. Adequate supplies of clothing and shoes in necessary sizes are maintained at CJH.

148. At the time of admission to CJH, each juvenile's personal property is identified and forwarded to the Property Room for safekeeping. Items in value of over $5.00 are put in a safe.

149. Juveniles are permitted to keep a great deal of their personal property while at CJH. These include magazines, books, pictures of girlfriends, toiletry items, and numerous other items.

150. The limitations placed on retention of personal items by juveniles at CJH are reasonable.

151. Juveniles at CJH, expect in Unit J, do not have free access to and from their rooms during the day when there is no organized activity.

152. Juveniles are allowed to keep personal hygiene items or are provided with such items upon admittance to CJH.

153. Juveniles at CJH are required to make their own beds and maintain their immediate living quarters.

154. All other work details at CJH are accomplished on a voluntary basis.

155. Juveniles at CJH are not precluded from talking at meals.

156. Any Conclusions of Law hereinafter recited which sould be deemed a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction over the civil rights claims in this action arising under the United States Constitution and 42 U.S.C. § 1983, pursuant to 28 U.S.C. § 1343(3) and (4).

2. The Court has subject matter jurisdiction over the claims arising under the California Constitution and California statutes pursuant to principle of pendent jurisdiction. United Mine Workers v. Gibbs, 383 U.S. 715, 86 S. Ct. 1130 (1966).

3. A three judge court pursuant to 28 U.S.C. § 2281 is not required to adjudicate any claims in this action. Morales v. Turman, 430 U.S. 325, 97 S. Ct. 1189 (1977).

4. This action is an appropriate class action. Fed. R. Civ. Pro.

23(a), 23(b)(2).

5. The defendants' systematic failure to provide access to adequate medical and psychiatric care to members of plaintiff's class at CJH violates the right of members of plaintiff's class to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285 (1976), Todaro v. Ward, 565 F. 2d 48 (2nd Cir. 1977).

6. The defendants' systematic failure to provide access to adequate medical and psychiatric care to members of plaintiff's class at CJH violates the right of members of plaintiff's class to be free from cruel or unusual punishment under Article I, Section 17 of the California Constitution.

7. The defendants' syste-

matic failure to provide access to adequate medical and psychiatric care to members of plaintiff's class at CJH violates the right of members of plaintiff's class to "custody, care, and discipline as nearly as possible equivlant to that which should have been given by his parents" under § 202 of the California Welfare and Institutions Code (formerly § 502 of the California Welfare and Institutions Code).

8. Defendants' failure to provide juveniles with adequate facilities, time and procedures for daily showering violates the rights of members of plaintiff's class to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution to be free from cruel or unusual punishment under Article I, Section 17 of the California Constitution, and to

receive "care, custody and discipline as nearly as nearly as possible equivalent to that which should have been given by his parents" under § 202 of the California Welfare and Institutions Code (formerly § 502 of the California Welfare and Institutions Code).

9. Defendant's failure to provide juveniles with adequate access to toilets at night at CJH violates the rights of members of plaintiff's class to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constituion, to be free from cruel or unusual punishment under Article I, Section 17 of the California Constitution and to receive "care, custody, and discipline as nearly as possible equivalent to that which should have been given by his parents" under § 202 of the California Welfare and Institutions Code (formerly § 502 of the California Welfare

and Institutions Code).

10. The other practices, policies and conditions of confinement at CJH challenged by plaintiff in this action including segregation, movement and classification practices, general cleanliness and hygenic conditions, maintenance of a juvenile's dignity and self-respect, education, recreation, visiting, mail, telephone, discipline and staffing (except with respect to medical practices) policies as shown by the evidence in this case, do not amount to violation of any rights of members of plaintiff's class under the Eighth and Fourteenth Amendments of the United States Constitution, Article I, Section 17 of the California Constitution, or § 202 of the California Welfare and Institutions Code (formerly § 502 of the California Welfare and Instituitons Code).

11. The practices, policies and conditions of confinement at CJH, as disclosed by the evidence at trial, do not amount to any violation of the right of members of plaintiff's class to treatment under the United States Constitution, the California Constitution, or § 202 of the California Welfare and Institutions Code (formerly § 502 of the California Welfare and Institutions Code), assuming such a right to treatment is provided to detained juveniles by these constitutional or statutory provisions.

12. Plaintiff and the plaintiff class are entitled to judgment on the medical, psychiatric, shower and toilet access issues presented in this case.

13. Injuntive relief as described in this Court's Order of April 12, 1979, is necessary and appropriate

to remedy the constitutional and statutory deficiencies in defendants' medical, psychiatric, shower, and toilet access policies, practices and conditions of confinement as described above.

14. Defendants are entitled to judgment and the plaintiff and plaintiff class are not entitled to any relief on the issues of segregation, movement and classification practices, general cleanliness, and hygienic conditions, maintenance of a juvenile's dignity and self-respect, education, recreation, visiting, mail, telephone, discipline and staffing (except with respect to medical practices) policies.

15. The plaintiff and his class are the prevailing parties with regard to medical, psychiatric, overcrowding, shower and toilet access issues.

16. The defendants are the prevailing parties with regard to segregation, movement and classification practices, general cleanliness and hygiene conditions, maintenance of a juveniles's dignity and self-respect, education, recreation, visiting, mail, telephone, discipline and staffing (except medical) policies, and all other issues concerning which affirmative relief was not granted.

17. Any Findings of Fact set out in Paragraphs 1-156, supra which should be deemed a Conclusion of Law is hereby adopted as such.

Dated: August , 1979.

/s/ Manuel L. Real

Honorable Manuel L. Real
United States District Judge

SUBMITTED BY:

Dated: July 20, 1979

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APPROVED AS TO FORM

Dated: July 20, 1979

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# Opposition

Supreme Court, U.S.
FILED
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No. 81-996

IN THE

# Supreme Court of the United States

October Term, 1981

DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,

*Petitioners,*

*vs.*

KENNETH C. FARE, in his capacity as Los Angeles County Chief Probation Officer; THE SUPERINTENDENT OF LOS ANGELES COUNTY CENTRAL JUVENILE HALL; PETER F. SCHABARUM, KENNETH HAHN, EDMUND E. EDELMAN, DEANE DANA, and MICHAEL ANTONOVICH, in their capacities as Supervisors of the County of Los Angeles,

*Respondents.*

## OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND SUPPLEMENT TO APPENDIX.

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## Question Presented.

1. The question for review is whether the Ninth Circuit Court of Appeals appropriately concluded that the district court should have abstained pending resolution of state law claims in a class action brought on behalf of a class of juvenile detainees challenging conditions of detention where pendent state law claims, which were plainly capable of an interpretation imposing a more demanding state standard of judicial review but which had never been so construed by any state court, were more likely to provide a basis for review than federal claims, in light of the facts that the state law claims were part of a comprehensive state statutory scheme involving a sensitive area of state social policy, and that, in any event, a new or further trial would be required because the challenged conditions had changed substantially since the trial in 1976, and because the district court had decided the matter without benefit of this Court's landmark decision in *Bell v. Wolfish* (1979) 441 U.S. 520, establishing the applicable federal standard of judicial review.

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DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,

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*vs.*

KENNETH C. FARE, in his capacity as Los Angeles County Chief Probation Officer; THE SUPERINTENDENT OF LOS ANGELES COUNTY CENTRAL JUVENILE HALL; PETER F. SCHABARUM, KENNETH HAHN, EDMUND E. EDELMAN, DEANE DANA, and MICHAEL ANTONOVICH, in their capacities as Supervisors of the County of Los Angeles,

*Respondents.*

## OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND SUPPLEMENT TO APPENDIX.

### Statement of the Case.

This is a class action filed in 1975 pursuant to 42 U.S.C. §1983, and pendent state law claims, challenging almost every condition of confinement of juveniles at the Los Angeles County Central Juvenile Hall (CJH) (court of appeals opinion, "app. dec.", petitioners' appendix, p. 2). The complaint alleges violation of federal and state constitutional provisions, as well as state statutory provisions (*id.*).

CJH is one of three main juvenile detention facilities maintained by respondents for the short term detention of juveniles accused of violations of law pending juvenile court proceedings (appellants' opening brief in the court of appeal, (app. brf."), reproduced in the appendix hereto, p. 5, summarizing the record). The average length of stay at CJH is two weeks, and 90 to 95% of the juveniles leave CJH within two months (app. dec., p. 8). After the juvenile court disposition hearings, juveniles are released or transferred to camps or other placements, or may remain at CJH pending implementation of a court ordered treatment plan (app. brf., p. 7).

At the time of trial, CJH had a rated capacity of approximately 506 boys and 77 girls (*id.*, p. 5). It is located on 9.5 landscaped acres three miles from the civic center, and adjacent to the Los Angeles County/University of Southern California Medical Center (*id.*, pp. 5-6). In addition to residential living buildings, and administrative buildings, it has its own school facility, medical facility, four recreational fields, two heated swimming pools and indoor gymnasiums (*id.*).

CJH has regularly experienced short-term overcrowding ranging to as much as 15% over its rated capacity since 1971, when the county lost one-third of its total juvenile capacity due to a major earthquake which destroyed one of its major juvenile facilities (*id.*, pp. 7-9). On May 10, 1976, as modified on December 29, 1976, the district court issued a preliminary injunction generally enjoining the facility from exceeding its rated capacity as established by the state (app. dec., pp. 4-5).

The matter proceeded to trial in September and October of 1976, final argument on February 28, and March 1, 1977, with the matter fully submitted on March 30, 1977 (app. brf., p. 3). Although several attempts to obtain a decision were made, a status conference was not held until June, 1978. At such status conference, the district court tentatively

indicated in chambers that none of the allegations rose to constitutional proportions except allegations relating to the medical care delivery system, which the court then indicated appeared to have been satisfactorily improved by the time of trial, and allegations concerning the access of juveniles to toilet facilities during the night time (*id.*). A request was made to counsel to report back to the court as to the changes that had occurred since trial (*id.*). A number of such reports were filed, and beginning in November of 1978, a series of conferences were held with the court and counsel to discuss these changes and the possibility of settlement (*id.*, p. 4).

The parties were unable to settle the matter, and the court, without holding any evidentiary hearings to resolve the disputes as to the changes at CJH since trial, issued the judgment and order of April 12, 1979 which is the subject of this appeal.

With respect to the majority of the claims, the district court found no constitutional or statutory violations (app. dec., p. 4). No appeal was taken from that portion of the order, and the judgment is final as to those issues (*id.*).

The district court did issue orders with regard to overcrowding, showering procedures, toilet access procedures, and certain medical practices finding violations of the provisions of the United States and California Constitutions that prescribed cruel and unusual punishment, and that the practices were violative of California Welfare and Institution Code sections 202, which requires that during a juvenile's detention he be given "custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents" and section 851, which requires that juvenile halls "shall be conducted in all respects as nearly like a home as possible." (*Id.*)

With regard to overcrowding, the court found unacceptable respondents' former procedures for dealing with periodic overcrowding whereby newly arrived juveniles were

temporarily housed in available rooms in the infirmary or segregation units or on mattresses placed on the floor of the dayrooms until they could be transferred to residential rooms as space became available (app. brf., pp. 8-9). Specifically, the court ordered that the facility could not exceed its state established rated capacity, excluding from that rated capacity rooms in the infirmary or segregation units (app. dec., pp. 4-5).

The court found unacceptable the former showering procedures whereby all juveniles received a daily opportunity for showers of two to three minutes duration in individual showers where the temperature and the flow of the water was centrally controlled by staff, and ordered daily showers of at least five minutes duration, and the installation of individual privacy screens, and individual shower controls (app. brf., pp. 12-13).

The court found unacceptable the prior procedures whereby juveniles were housed at night and at certain other times in individual rooms not equipped with toilet facilities and gained access to such facilities by knocking on the door to their rooms and having staff members give them access to common toilet facilities (*ibid.*, pp. 11-12). Specifically, the district court ordered that no juvenile be assigned to a room without a toilet unless procedures were established to enable a juvenile direct and immediate access, without requesting permission, to a toilet at all times (dist. ct. dec., petitioners' appendix, pp. 60-61).

With regard to the health care delivery system, the court ordered specific and detailed procedures with regard to virtually all aspects of medical admissions screening, staffing, sick call, and treatments (*ibid.*, pp. 30-50).

Respondents filed an appeal from these orders contending that the conditions in question violated neither the federal constitution nor state law.

The court of appeals, recognizing that "the operation of California's juvenile halls is part of a comprehensive stat-

utory scheme regulating the juvenile justice system in California" and that "a state's operation of its detention facilities involved a sensitive area of social policy, an area into which federal courts do not lightly intercede", found that the district court should have abstained from exercising jurisdiction pending proceedings in the state courts.

Recognizing that its decision placed an added burden on the petitioners, the court of appeals found that the sensitivity and importance of the issues involved outweighed such considerations, particularly in light of the fact that the conditions at CJH had changed significantly since the trial in 1976 (which would, in any event, necessitate further proceedings to evaluate the changed conditions).

## ARGUMENT.

### This Case Presents a Unique Procedural History and Facts Inappropriate for Generalized Application.

The crux of the present problem is that the federal bases for relief are weak at best, and are unlikely to be meritorious in light of this Court's landmark decision in *Bell v. Wolfish* (1979) 441 U.S. 520, decided one month after the district court issued the judgment appealed from.[1] In such an event, the petitioners' right to relief, if any, must be founded on California statutory schemes, which although plainly capable of an interpretation requiring a higher standard of review than the federal standard, have never been so construed by any California court.

Moreover, it is reasonably clear that had the court of appeal not determined that the district court should abstain, it would be necessary to remand the matter for further proceedings, and likely, for a new or further trial.

As the court of appeal observed, the conditions at CJH had changed significantly since the trial in 1976. Although the district court held further proceedings as to such changes between the trial in 1976 and its decision in 1979, these proceedings were largely informal, held in chambers, and oriented primarily towards settlement. No formal hearings were ever held to resolve factual disputes as to the changes in the conditions.

Moreover, the district court had decided the matter entirely without benefit of this Court's landmark decision in *Bell v. Wolfish, supra,* and utilized an Eighth Amendment standard, rather than the applicable due process standard promulgated in *Bell v. Wolfish, supra.*

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[1]The facts of this case, together with appropriate references to the record, are summarized in respondents' opening brief in the court of appeals, which is filed herewith as part of the appendix. Also, contained in that brief are the arguments as to why the conditions are not violative of the United States Constitution.

Under these circumstances, it was particularly appropriate for the court of appeals to apply abstention principles. Not only does the question of a state's operation of its detention facilities involve a sensitive area of state social policy, an area into which the federal courts should not lightly intercede (*Pell v. Procunier* (1974) 417 U.S. 817, 825-826; *cf. Bell v. Wolfish, supra,* at 547-48, 562), but the federal claims of relief are secondary, at best, to the state claims in terms of likelihood of ultimate success. As a new trial, or at least extensive further trial proceedings are required in any event, it is best, applying considerations of comity, that the further proceedings be held in a state forum.

Unlike decisions in such cases, as *McRedmond v. Wilson* (2nd Cir. 1976) 533 F.2d 757, which petitioners contend are in conflict with the court of appeal's decision in the present case, the state claims here are more substantial than, and predominate over the federal claims. Although the federal claims are not so unsubstantial or so obviously without merit that the court would be warranted, under traditional doctrines, in declining pendent jurisdiction over them, the court of appeal, and this Court is faced with the very real dilemma that in the event it is concluded that there is no federal constitutional right to relief, a federal court would be left to decide an important state law issue of first impression.

The result reached in this case is unlikely to have far-reaching impact upon other civil rights actions. The court of appeals was careful to point out in its footnote 7 that it was not requiring plaintiffs bringing civil rights actions to always exhaust the possible bases for relief provided by state law.

The unusual delay of the district court in deciding this matter, the intervening changes in the operation of CJH, combined with the post-judgment change in the federal stan-

dard of review of conditions of confinement presents a unique procedural history, inappropriate for generalized application.

**Conclusion.**

For the foregoing reasons, respondents oppose the petition for writ of certiorari and believe it should be denied.

Respectfully submitted,

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Principal Deputy County Counsel,
*Attorneys for Respondents.*

**APPENDIX.**

No. 79-3260

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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CLARENCE E. CABELL, in his capacity as Los Angeles County Acting Chief Probation Officer; JOHN SARCHETT, in his capacity as Superintendent of Los Angeles County Central Juvenile Hall; SIDNEY DWOSKIN, in his capacity as Chief of Health Services for the Los Angeles County Probation Department; EUGENE WEINER, in his capacity as Chief Physician of Los Angeles County Central Juvenile Hall; BAXTER WARD, PETER F. SCHABARUM, KENNETH HAHN, JAMES HAYES, and EDMUND E. EDELMAN, in his capacities as Supervisors of the County of Los Angeles,

*Appellants,*

*vs.*

DWIGHT MANNEY, by his mother, ANNIE MAE MANNEY, as next friend, on behalf of himself and all others similarly situated,

*Appellees.*

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## APPELLANTS' OPENING BRIEF.

ON APPEAL
FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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## QUESTIONS PRESENTED ON APPEAL

1. Whether conditions of detention imposed on juvenile criminal offenders held in custody pending trial or court ordered disposition are constitutionally and statutorily sufficient if such conditions are not specifically proscribed, are not imposed for punishment, and are rationally related to legitimate custodial concerns?

2. Whether, at Central Juvenile Hall, the Constitution or state laws proscribe (a) occasional short term housing of juveniles in excess of the facility's rated capacity; (b) requiring juveniles to request access to lavatory facilities; and (c) limiting daily showers to less than five minutes duration in shower stalls without individual privacy screens, and where the flow and temperature of water is controlled by staff.

3. Whether medical care provided to juvenile criminal offenders held in custody pending trial or court ordered disposition is constitutionally or statutorily sufficient unless systemic deficiencies are so certain to result in a failure to deal with serious medical needs that it amounts to callous indifference to such needs and constitutes punishment?

4. Whether any systemic deficiency in medical care provided at Central Juvenile Hall is so certain to result in a failure to deal with serious medical needs that it amounts to callous indifference to such needs and constitutes impermissible punishment?

## STATEMENT OF THE CASE

This action against the County Board of Supervisors, the Chief Probation Officer and several of his subordinates was filed in September of 1975 pursuant to 42 USC § 1983 and pendent state claims for injunctive and declaratory relief concerning a panoply of conditions and practices at the Los Angeles County Central Juvenile Hall (herein "CJH").

(Pretrial Conference Order, herein "PCO". p. 1:22-24; *cf.* 4-12-79 Order, p. 1:17-22). On November 20, 1975 the District Court certified the action as a class action on behalf of all male juveniles incarcerated at CJH "[w]ho are alleged to be or have been found to be persons described by California Welfare and Institutions Code Section 602."[1] (4-12-79 Order, p. 1:23-28).

The matter proceeded to trial in September and October of 1976, final argument on February 28 and March 1, 1977, with the matter fully submitted on March 30, 1977. (Plaintiff's Opposition to Emergency Motion, 4:1-7) Although several attempts to obtain a decision were made, a status conference was not held until June, 1978. (*id.*) At such status conference, the Court tentatively indicated in chambers that none of the allegations rose to constitutional proportions except the medical care delivery system, which the Court then indicated appeared to have been improved satisfactorily by the time of trial, and the access of juveniles to toilet facilities during the nighttime. A request was made to counsel to report back to the Court as to changes that had occurred since trial. (Defendant's Motion for Stay Pending Appeal, p. 3. *Cf.* Plaintiff's Opposition to Emergency Motion for Stay Pending Appeal, pp. 3-4) A number of such reports were filed with the Court, and beginning in November of 1978, a series of conferences were held with the District Court and counsel to discuss these changes and the possibility of settlement of the case. (*id.*)

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[1]Welfare and Institutions Code § 602 provides:

> "Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age is within the jurisdiction of the juvenile court, which may adjudge such a person to be a ward of the court."

The parties were unable to settle the matter and on April 12, 1979 the Court entered the order at issue in this appeal finding that claims of constitutional deficiency were not established with regard to segregation, movement and classification practices, general cleanliness and hygenic conditions, maintenance of a juvenile's self-respect, education, recreation, visiting, mail, telephone, discipline, and non-medical care staffing. (4-12-79 Order, 2:5-11) The Court found that while the conditions and practices were not models of the ideals expressed by many sociologists, they did not individually or collectively amount to violations of the Constitution or State law. (4-12-79 Order, 2:12-16)

However, the Court found that overcrowding, some hygenic practices, and medical and psychiatric care did amount to a violation of the United States and California constitutions, and California Welfare and Institutions Code Section 502 (renumbered in 1977 as §202) requiring "custody, care, and discipline as nearly as possible equivalent to that which should be given by his parents." (4-12-79 Order, 2:17-24)

Thereafter, Appellants moved the District Court for several modifications of its order and for a stay pending appeal. (Defendant's Motion for Modification of Judgment; Defendant's Motion for Stay Pending Appeal) The Court agreed to modify paragraph 4B of its order regarding individualized treatment plans by vacating its provisions pending issuance of a new provision which has not yet occurred; and added requested provisions concerning emergency exceptions to the order, and an administrative procedure that must first be exhausted prior to the initiation of a petition for contempt. (Supplemental Judgment and Order) The Court denied the requested stay pending appeal, which stay was then granted

by this Court on the basis of *Bell v. Wolfish* (1979) 441 U.S. ... , 99 S.Ct. 1861,[2] on June 18, 1979.

## STATEMENT OF THE FACTS

CJH is one of three main juvenile facilities (Fitzgerald Affidavit[3]) operated by Los Angeles County for the detention of minors held for claimed violations of the law, and who meet certain statutory criteria for detention. (Fitzgerald Affidavit; Welf. & Inst. C. §§602, 628) It is a large facility with a rated capacity of 506 boys and 77 girls, located on 19.5 acres, about three miles from the Civic Center and adjacent to the Los Angeles County/University of Southern California Medical Center. (Canin Affidavit) Established in 1927, CJH is composed of resident living buildings, many of which were constructed in recent years, administration, school, kitchen and dining, medical, chapel, recreational, maintenance, and other buildings. (Court's tour; Photographs, Exhibits AO-CO; Canin Affidavit) The entire facility is landscaped with grass, trees and shrubs, and has four recreational fields, two heated swimming pools, and two indoor gymnasiums. (*id.*)

Under California's Juvenile Court Law, minors accused of criminal acts may be temporarily detained for 72 judicial hours prior to a formal detention hearing (similar to an adult arraignment) at which time the juvenile court makes a formal order for detention or release (Welf. & Inst. C. §636) pending an adjudication hearing (similar to an adult trial; Welf. & Inst. C. §§650 *et seq.*). At the detention hearing, the court is required to release the juvenile unless he meets certain criteria set forth in Welfare and Institutions Code

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[2]All page references to *Bell v. Wolfish* are to the Supreme Court Reporter.

[3]All depositions and affidavits were admitted into evidence at trial by stipulation.

Section 628. After the adjudication hearing (the trial) and if the charges are determined to be founded, the case is continued for another two weeks for a disposition hearing, (similar to adult sentencing) and a further determination of detention or release is made by the court (Canin Affidavit). At the disposition hearing, the court formulates a treatment plan for the rehabilitation of the minor and the protection of the community; ordering one of several plans (home on probation, camp, suitable placement, California Youth Authority detention, unfit for juvenile court, further detention at a juvenile hall as a condition at probation, etc.), or the court may order the continued detention of the minor pending the implementation of such order, which is accomplished when a bed is available at the designated placement. (*id.*)

CJH is used primarily for the short-term detention of juveniles pending these juvenile court proceedings (id.), and the duration of the stay ranges from a few hours to two to four weeks, although some juveniles involved in lengthy and difficult trials and some juveniles detained by order of the court may stay several months.[4] After the juvenile court disposition hearing, juveniles are released or transferred to camps or other placements for treatment or may remain at CJH pending implementation of the court ordered treatment program. (Canin Affidavit)

1. Overcrowding

To provide additional juvenile detention capacity to the County juvenile detention system, a new major facility was built and opened in the Sylmar area in 1966. (Fitzgerald

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[4]Average stay is 2 weeks; only 5% stay over 2 months; less than ¼ of 1% stay between 4 and 5 months. *See* summary of evidence in Defendant's Post Trial Brief, 4-5; Exhibits A, H, I, AC, 22; Interrogatories No. 249, 251-254 of 4th set submitted in evidence; *cf.* Rodriguez Deposition 31-32; Deveraux Deposition 25; Jackson Deposition 99; Hudson Deposition 12-13; *cf.* Proposed Findings 2:26-3:3.

Affidavit, 11) However, as a result of a major earthquake in that area in 1971, the Sylmar facility collapsed, a smaller juvenile detention camp was damaged, and both became unusuable. This resulted in the overnight loss of about 500 beds, about ⅓ of the then capacity of the entire juvenile detention system in the County (*id.*) The County took a number of steps to handle this disaster and to reduce the number of juveniles detained (*id.*, at 9-13; *cf.* Exhibits 9, 13, 14, 22, AD). Despite these efforts, periodic overcrowding of remaining facilities continued in varying degrees into 1976 while new facilities were being built (*id.*).[5] In the six month period from November 1975 to March 1976, CJH exceeded its rated capacity on a total of 15 days.[6]

During this period of overcrowding at CJH, newly arrived juveniles in excess of capacity were temporarily housed in available rooms in the infirmary and the Intensive Care Unit, (herein "ICU"),[7] or on mattresses placed on the floor of dayrooms, until they could be transferred to residential

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[5]The Proposed Findings (p. 2:3-10) indicate that at the time of trial, 567 juveniles were confined at CJH. As the population varies from day to day, it is not clear what period is covered by this finding. 567 is the number of beds at CJH including the infirmary and intensive care unit. (See Interrogatories, 2nd set, submitted in Evidence No. 7; Exh. AA; AB; McKinney, RT 1157:15-17)

[6]From 2-6 juveniles on 4 days, 2 of which were consecutive, in October, 1975; from 8-78 juveniles on 5 days, 3 of which were consecutive in November, 1975. The facility did not exceed its capacity on any days in December 1975 through February of 1976; from 9-52 juveniles on 6 days, 4 of which were consecutive in March of 1976. (Gillen Affidavit)

[7]The Intensive Care Unit is a separate housing area where some juveniles are segregated for initial periods of their detention because of the nature of their charges or other factors, to evaluate problems they may cause in the general population, and for the temporary detention of behavior problems. It provides more secure housing, a higher staff to juvenile ratio, and separate recreational, school and other areas to minimize commingling with the general population. (*Cf.* Proposed Findings, 17:11-17)

rooms as space became available (Proposed Findings, 17:25-18:14 *cf.* Hudson Deposition 19; Kory Deposition 98, 103; Gillen Deposition 86-88; 34; Chapman Deposition 79) Even though the individual rooms are large (approximately 70 square feet; *see* Photographs, Exhibits BQ, BS, BW, BO) and most juveniles generally spend only their sleeping hours there, the staff continued to house one juvenile to a room and temporarily house overcapacity juveniles as indicated until space became available, rather than "double bunking" some juveniles two to a room or adding additional beds to dormitories.

During these periods of overcrowding, the California Youth Authority, the state agency charged with promulgating and enforcing state laws with regard to juvenile detention facilities (Welf. & Inst. C. §§210, 209) regularly monitored the overcrowding within the County juvenile detention system (Gillen Affidavit). Acknowledging the problems caused by the Sylmar earthquake (Exhibits 9, 12, 13) this Agency adopted a policy that overcrowding would not be deemed to render a facility unsuitable for juvenile detention unless the facility exceeded its rated capacity on more than 15 days in a 30 day period or unless the overcrowding was substantial[8] (Judge Gadbois Affidavit, Gillen Affidavit; Exhibit 16).

On May 10, 1976, the District Court issued a preliminary injunction prohibiting the temporary housing of over capacity juveniles in the infirmary or ICU, prohibiting the temporary sleeping of juveniles on mattresses on the floor, and prohibiting the housing of more than 328[9] juveniles

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[8]Exceeding 5 or 10%. (Exhibit 16)

[9]A number less than the facility's rated capacity as determined by the California Youth Authority. (Fitzgerald Affidavit)

at CJH. (Preliminary Injunction; Proposed Findings, 16:15-19)

Thereafter, Appellants moved the Court to vacate or modify the injunction on the grounds, *inter alia*, that the Sylmar facility had been rebuilt and was soon to be operational, a new 160 bed facility at CJH was about to become operational, that new state legislation precluding the housing of non-criminally oriented juveniles at a juvenile hall (Proposed Findings, 2:11-15; Welf. & Inst. C. §207) had significantly reduced the number of juveniles within the system, that the Court's order was causing serious overcrowding at other facilities in the system, and on the grounds that the 328 capacity figure chosen by the court was less than the capacity approved by the California Youth Authority for CJH. (Defendant's Motion to Vacate or Modify Injunction; Fitzgerald Affidavit)

On December 29, 1976, the Court modified the preliminary injunction to prohibit housing of juveniles at CJH in excess of the rated capacity as determined by the California Youth Authority, rather than the 328 capacity originally specified by the Court, other provisions remaining the same (Modified Preliminary Injunction; Proposed Findings, 16:15-19). The Sylmar facility reopened and the new 160 bed addition to CJH became operational, and the rated capacity of CJH, as determined by the California Youth Authority increased accordingly.[10] This modified preliminary injunction was included in substantially the same form in the order from which this appeal is taken. (4-12-79 Order)

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[10]The maximum rated capacity, as approved by the CYA varies from time to time with the deletion of or addition of approved bed space. (Proposed Findings, 16:26-17-1). It has been as high as 567. (See note 5, *supra*) Because of the destruction of some older units the rated capacity is now 506.

2. Lavatories

CJH was built for the most part with individual lockable rooms, and some multiperson dormitories, adjoining a corridor with nearby central toilet and shower facilities adjacent to the dayroom on the same floor (*cf.*, Photographs: Exhibits BN (Lavatory, Unit AB; BO (Dormitory, Unit CD); BQ (Individual room, Unit EF), BS (Individual Room, Unit J); BV (Individual Room, Unit KL); BW (Dormitory, Unit KL); BY (Lavatory, Unit KL); BZ (Lavatory, Unit MN) CD and CE (Individual Room, ICU). Although some rooms (Unit J, ICU) are equipped with individual toilets and sinks, most rooms and dormitories are not so equipped. The schools and some other facilities have their own lavatory facilities.

Juveniles as a group, are given the opportunity to use lavatory facilities frequently throughout the day, and individually upon request. (Deveraux Deposition 46-47; Rodriguez Deposition 54-55; Kory Deposition 67:14-17, 68; Hudson Deposition 58).

All juveniles are locked in their rooms at night during sleeping hours and occasionally during the day to maintain control, minimize the supervision problems, reduce the opportunity for altercations, and the potential for escape and injury to staff and minors (*cf.* Exhibits, DS, CJH Manual, para 103.02, P-9, IIIF). At such times all a juvenile must do is knock on his door to have a staff member, who is on duty at all times, give him access to the toilet facilities. (*Cf.* Jackson Deposition 82, 97; Hudson Deposition 58; Rodriguez Deposition 56; Deveraux Deposition 46-47)

The Court found that such procedures amount to violations of the United States and California constitutions and the provisions of Welfare and Institutions Code Section 502 (now §202) requiring "custody, care and discipline as nearly

as possible equivalent to that which should be given by his parents," and issued its order providing that

> "[n]o juvenile shall be assigned to a room or dormitory which does not have its own toilet unless such procedures are established to enable a juvenile direct and immediate access, without the necessity of requesting permission to a toilet during all times of the day or night in which he is required to be in his room." (4-12-79 Order, 2:15-20)

3. Showers

Juveniles receive a daily shower at CJH (Plaintiff's Opening Post Trial Brief, 13:10-11). Conflicting evidence concerning the length of showers was offered; Appellees contending that the showers were limited to 2 to 3 minutes per juvenile (Proposed Findings, 14:3-4), Appellants contending that the juveniles received from 5 to 8 minutes to shower (Rodriguez Deposition, 34:16-20; Brown Deposition, 88:10-16).

The showers for each living unit are centralized and located within the lavatory facilities. The showers are contained in individual cubicles designed and used for one juvenile at a time, and are closed on three sides, but open at the front to permit supervision. (Photographs; Exhibits BN, BY, BZ). The flow and temperature of the water for each group of showers is centrally controlled by a staff member by use of flow control valves, equipped with a temperature gauge, located adjacent to the showers, whereby the hot and cold water is premixed before reaching the individual showers. (Brown Deposition, 8:1-10) Each individual shower does not have separate control valves (Proposed Findings, 14:7-9). Juveniles may request the staff to adjust the flow or temperature of the water (Brown Deposition, 8:1-10).

The Court, finding these procedures inadequate, ordered that each juvenile be permitted a daily shower of at least 5 minutes duration, and that each shower be equipped with privacy devices, and controls to permit each juvenile to regulate the flow and temperature of the water during his shower. (4-12-79 Order, 3:11-19)

4. Health Care

Health care for the 500 or so juveniles at CJH is provided by over 200 full and part time medical and associated personnel, including doctors, nurses, dentists, psychiatrists, psychologists and psychiatric social workers, through an annual budget for health care alone of over four million dollars (Exhibits EH, FX, IP, HU; Dwoskin, RT 1025; Plaintiff's Status Report, p. 17).

After being arrested and brought to CJH, all juveniles are given an initial admissions screening by a registered nurse prior to housing with the general population. (Proposed Findings, paragraphs 18-19; Broady, RT 1082; Defendants' Status Report, p. 9.) At the admissions screening, each juvenile is examined by the nurse visually, asked about any medical problems, checked for height, weight, vision, blood pressure, and temperature, and administered tests for venereal and communicable diseases.

After the juvenile is ordered detained by the juvenile court at the detention hearing, which is held within three court days after the initial detention at CJH, and medical consent is obtained from the court, a more complete physical examination by a licensed physician is given (Exhibits FX, pp. 16-18; KH, p. 2).

During a juvenile's stay at CJH, emergency care is provided when necessary, and non-emergency needs are handled at sick call which is conducted several times a day by registered nurses. At sick call, previously prescribed med-

ications are distributed, and the juveniles' medical complaints are evaluated. Minor ailments are treated by the nurse and the nurse culls out those juveniles who should be seen by a physician and makes an appointment for them to see the doctor.

Many maladies are handled at the facility's infirmary. More extensive treatment is available at the Los Angeles County/University of Southern California Medical Center located adjacent to the facility.

## ARGUMENT

### I

### STANDARD OF REVIEW

In *Bell v. Wolfish, supra*, the Supreme Court promulgated an appropriate standard of review for conditions and restrictions of pretrial detention. Rejecting reliance upon the evidentiary presumption of innocence as a basis for the more demanding standards of review previously used by many lower courts, the High Court held that conditions of pretrial confinement are to be upheld if they are not specifically proscribed by the Constitution, are not imposed primarily for the purposes of punishment, and are reasonably related to legitimate custodial concerns.

In applying this standard of review, the High Court held that a court was not permitted to substitute its judgment of the best procedure for that of the custodial officials, emphasizing the importance of this principle by referring to it no fewer than 12 times[11] and framing its application as a question of separation of powers (*Bell, supra*, at 1879).

The Supreme Court reaffirmed its earlier holding in *Pell v. Procunier* (1974) 417 U.S. 817, 827, that in the absence of substantial evidence in the record to indicate that the authorities had exaggerated their response to security concerns, courts should ordinarily defer to their expertise. To avoid misapplication of this standard the Court appropriately referred to the detainees' burden in this regard as a "heavy" one (*Bell, supra* at 1886). Lest a court might not give sufficient deference to the authorities, the Court, quoting from its earlier decision in *Jones v. North Carolina Prisoners Union* (1977) 433 U.S. 119, 132, again stated with regard to the showing required of the authorities:

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[11]*Bell, supra*, (dissent at Marshall) 1889 at n. 5.

"It is enough to say that they have not been conclusively shown to be wrong in this view." (*Bell, supra* at 1882)

None of the conditions or practices at issue in this appeal are specifically proscribed by the Constitution. There is no basis in the record to find that they were imposed for the purpose of punishment. None of the issues remotely approach such practices as "loading a detainee with chains and shackles and throwing him in a dungeon" (*Bell, supra,* 1874, at n. 20) which, while clearly related to security, are so harsh and "employed to achieve objectives that could be accomplished in so many alternative and less harsh methods that it must be concluded they were imposed for punishment." (*id.*)

As hereinafter argued, all of the practices and conditions at issue are rationally related to legitimate custodial concerns. Under such circumstances the Appellant's actions must be upheld.

Although the District Court may have disagreed with the judgment of the custodial officials about the extent of the security and other custodial "interests affected and the means required to further those interests" (*Bell, supra* at 1882), the Supreme Court's "decisions have time and again emphasized that this sort of unguided substitution of judicial judgment on matters such as this is inappropriate." (*id.*)

As further emphasized in the concluding paragraph of the Court's opinion in *Bell*:

"Judges, after all, are human. They no less than others in our society, have a natural tendency to believe that their individual solutions to often intractable problems are better and more workable than those of the persons who are actually charged with and trained in the running of the particular institution under examination. But under the Constitution, the first question

> to be answered is not whose plan is best, but in what branch of the Government is lodged the authority to initially devise the plan. This does not mean that constitutional rights are not to be scrupulously observed. It does mean, however, that the inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution, or in the case of a federal prison, a statute. The wide range of 'judgment calls' that meet constitutional and statutory requirements are confided to officials outside of the Judicial Branch of Government." (*Bell, supra* at 1886).

As stated in *Sweet v. South Carolina Department of Corrections* (4th Cir. 1975) 529 F.2d 854, 859:

> "It has been well said that '[c]ourts encounter numerous cases in which the acts or conditions under attack are clearly undesirable and are condemned by penologists, but the Courts are powerless to act because the practices are not so abrasive as to violate a constitutional right.' "

## II
## MEDICAL STANDARD OF REVIEW

*Bell v. Wolfish,* while not dealing specifically with health care delivery systems, provides the general parameters by which all conditions of confinement are to be judged. The Court's earlier decision in *Estelle v. Gamble* (1976) 429 U.S. 97, gives further insight, at least with regard to an individual sentenced inmate's complaints of inappropriate medical care. In *Estelle*, the Court found that claimed inappropriate medical care did not rise to constitutional proportions unless it violated the Eighth Amendment's proscription against cruel and unusual punishment as evidenced by a callous and deliberate indifference to the serious medical needs of an inmate. Although the analysis in *Estelle* turned upon the Eighth Amendment, an inappropriate anal-

ysis with regard to unconvicted inmates who can not be subjected to any punishment in the constitutional sense, (*Bell, supra,* 1872 at n. 16) the more appropriate analysis under the Due Process Clause leads to the same analysis. *Cf. Arroyo v. Schaffer* (2d Cir. 1977) 548 F.2d 47, 50 & n. 3, where the Court concluded that the Due Process Clause requires no more than the Eighth Amendment in this context; and *Newman v. Alabama* (5th Cir. 1974) 503 F.2d 1320, 1330 & n. 14, (citing approvingly in *Estelle, supra,* 502 L.Ed. 261 at n. 14, with regard to this point) finding little difference between Eighth Amendment and Due Process analysis, the test under either being that: "the requisite showing consists of evidence of rampant and not isolated deficiencies which due to callous indifference subject inmates to severe deprivations."

*Estelle,* of course, dealt with the medical care of a single individual, an easier analysis than the evaluation of the impact of an entire health care delivery system on all inmates. "Courts are not as readily equipped to quantify the suffering occasioned by pervasive shortcomings as they are to assess whether a particular inmate had been mistreated." (*Newman v. Alabama, supra* at 1331-32). In evaluating health care systems as a whole as it effects most inmates, rather than its impact on one, a court must be alert not to trench "too cavalierly into areas that are properly the concern of 'the custodial officials'." (*Bell, supra* at 1882)

The fact that the health care system is not a desirable one does not render it unconstitutional. *Todaro v. Ward* (2d Cir. 1977) 565 F.2d 48, 50. The fact that some inmates have received egregious care does not render the health care system itself inadequate or unconstitutional. One or a few instances of such care, while perhaps actionable individually, do not establish the requisite pattern and practice that warrants broad relief (*cf. Spain v. Procunier* (9th Cir. 1976) 408 F.Supp. 534, 546; *Todaro v. Ward, supra* at 52). Nor

does the failure to adequately care for nonserious medical needs rise to constitutional proportions (*Estelle v. Gamble, supra; Todaro v. Ward, supra*) The deficiencies in health care must be systemic and large scale, affecting inmates broadly, necessarily, and seriously, rather than acts of individual negligence or malfeasance. (*Cf. Newman v. Alabama, supra* at 1332; *Todaro v. Ward, supra* at 55). Mere differences of medical opinion as to the appropriateness of the system and the nature of the treatment do not render the system unconstitutional (*Newman v. Alabama, supra* at 1332; *cf. Estelle v. Gamble, supra*). Rather, the deficiencies must be gross and rampant, and so certain to result in the failure to deal with the serious medical needs of inmates, that it can fairly support a conclusion of callous indifference to their serious medical needs (*cf. Newman v. Alabama, supra*, 1330 at n. 14, cited approvingly in *Estelle v. Gamble, supra*, 50 L.Ed.2d 261 at n. 14) — a finding that would likewise support a conclusion that the health care system amounted to impermissible "punishment" in the constitutional sense (*cf. Bell v. Wolfish, supra*).

## III
## STATE LAW CLAIMS

Appellees rely on State law claims in addition to their Federal Constitutional claims. In essence, these State law claims devolve to three: Welfare and Institutions Code Sections 202 (formerly Welf. & Inst. C. §502), 851, and the cruel "or" unusual punishment provisions of the California Constitution (Cal. Const., Article I Sec. 16). These State law claims add little, if anything to the federal claims, and the appropriate standard of review of the conditions of confinement remains the same.

Welfare and Institutions Code Section 202 broadly defines the purpose of California's Juvenile Court Law as

securing for a minor such care and guidance, preferably in his own home, as will serve the best interest of the minor and the state; "to protect the public from criminal conduct by minors; to impose on the minor a sense of responsibility for his own acts;" to remove the minor from his parents' custody "only when necessary for his welfare or for the safety and protection of the public; and when the minor is removed from his family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents." Subdivision (b) of Section 202 reemphasizes that the purpose of the chapter "also includes the protection of the public from the consequences of criminal activity."

Section 851, which deals specifically with juvenile halls, provides that such facilities shall not be connected with a jail or prison and "shall not be deemed to be nor treated as a penal institution" and "shall be conducted in all respects as nearly like a home as possible."

These general, and somewhat conflicting goals, have only tangentially been construed by California courts, and have never been applied by those courts to conditions of juvenile detention. Notwithstanding the goals of parental-like control and homelike atmosphere, juvenile halls have clearly been considered detention facilities where juveniles are kept as prisoners against their will pursuant to judicial process. *See, Patricia J. v. Rio Linda School District* (1976) 61 Cal.App.3d 278, 287, holding that, notwithstanding Welfare and Institutions Code Section 851, a juvenile detained in a juvenile hall is nevertheless a "prisoner" in custody as the result of legal process for the purposes of government tort liability. *Accord, Jiminez v. County of Santa Clara* (1974) 42 Cal.App.3d 407, 411. *Cf. Cal. Ops. Attny Gen.* 28 (1963), where the State Attorney General concluded, notwithstanding Section 851, a juvenile hall is a detention facility.

Moreover, at least equal consideration must be given to the stated purposes of the juvenile law to "protect the public from criminal conduct by minors", "to impose on the minor a sense of responsibility for his own acts" and "the protection of the public from the consequences of criminal activity" (Welf. & Inst. C. §851).[12]

Such factors have lead the California Supreme Court to conclude that there is little to distinguish a juvenile prosecution under Welfare and Institutions Code Section 602 from a criminal prosecution. *In re Mitchell P.* (1978) 22 Cal.3d 961, 962.

In fact, these sections have been held to require little more than, "punishment" not be a permissive purpose of juvenile detention, either before or after a juvenile is adjudicated a ward of the court. *In re Darryl T.* (1978) 81 Cal.App.3d 874, 881. *Accord, In re John S.* (1978) 83 Cal.App.3d 285, 291.

The references to parental care, custody and discipline, and "as nearly like a home as possible," are vague and give little guidance to their specific meaning, particularly in light of the other purposes which clearly contemplate secure detention. The phrases have not been more specifically construed by the California courts and have not been applied to conditions of confinement. Traditional dictionary references cast little light, defining "homelike" as "simple and wholesome," and "having qualities associated with

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[12]*Cf.* Welfare and Institutions Code Section 635 requires the court to release a minor from custody unless he "has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor, or reasonably necessary for the protection of the person or property of another that he be detained or that such minor is likely to flee to avoid the jurisdiction of the court. . . ."

home." The record is devoid of any evidence to give substance to these phrases.

However, when these goals are read in light of other related provisions of the code, it is apparent that the Legislature intended that rather broad discretion be vested in various State and local officials to determine what is appropriate and suitable. The "management and control" of the facility is vested in the probation officer (Welf. & Inst. C. §852). The Board of Supervisors of the County is charged with determining a "suitable house or place for detention of wards," subject to the approval of the presiding judge of the juvenile court (Welf. & Inst. C. §850).

The California Youth Authority is charged with and has adopted minimum standards for the operation and maintenance of juvenile halls (Welf. & Inst. C. §210; *cf.* Chapter 2, Division 4, Title 15, California Administrative Code), and in conjunction with the presiding judge of the juvenile court, is charged with annually inspecting juvenile halls as to whether they are a suitable place for the confinement of minors, and prohibiting their use if deficiencies are not corrected within 60 days (Welf. & Inst. C. §209). As these agencies have approved Central Juvenile Hall, and the facility has been permitted to continue to operate notwithstanding the self-executing provisions of Welfare and Institutions Code Section 209, it must be presumed that the facility at least generally complies with the legislative scheme for juvenile halls. For when a statute is vague, "the contemporaneous administrative construction of the enactment by those charged with its enforcement and interpretation is entitled to great weight, and the courts will not depart from such construction unless it is clearly erroneous or unauthorized." *Coca Cola Company v. State Board of Equalization* (1945) 25 Cal.2d 918. *Accord, Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640;

*cf.* Gaylord, "*An Approach to Statutory Construction*" Southwestern University Law Review 349, 400 and the numerous cases cited at note 250 therein.

It is reasonably clear that the Legislature contemplated secure, non-punitive confinement.[13] As such, there is little to distinguish such confinement from adult pretrial detention, which likewise is secure, non-punitive confinement. If anything, there are more legitimate governmental objectives which can justify conditions of confinement for minors, even prior to their adjudication as wards of the court, than there are for adult pretrial detainees. Adult detainees are detained for the limited purpose of insuring their presence at trial, and the nature of their confinement must be justified by this end and the concomitant interests, given their lawful custody, of maintaining security and order, and the effective management of the facility. (*Bell, supra* at 1874). In addition to these objectives, the nature of the juvenile's detention may be justified by a need to protect the public and to instill in the minor responsibility for his own acts (Welf. & Inst. C. §202).

As with adult pretrial detainees "punishment" cannot be a purpose of the detention (*Bell, supra,* 1872 at n. 16).

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[13]This is also the position of the California Youth Authority. In the 1972 Standards for Juvenile Homes, Ranches, and Camps (Exh. FC) the Youth Authority defines the vastly different roles of homes, ranches, camps, and juvenile halls, defining juvenile hall as "a county-operated institution for the temporary care of children for whom secure custody is required for their own protection or that of the community, in *physically restricting facilities* pending court disposition or transfer to another jurisdiction or agency. xxxx A juvenile hall is essentially a holding facility for the secure and temporary detention of children." (Exh. FC. Emphasis Added). In the Youth Authority's 1973 Standards (Exh. HR) the Authority likewise provides, concerning the various goals set forth in the statutes concerning juvenile halls: "Although these four functions are interrelated, all are specifically dependent on the first-*secure physical care*." (Exh. HR, p. 5, Emphasis Added) *cf.*, "Since the primary function of a juvenile hall is to provide secure physical care, buildings and grounds must be planned accordingly." (Exh. HR, p. 9)

Hence, the prohibition of either the Eighth Amendment against cruel "and" unusual punishment or of the California Constitution against cruel "or" unusual punishment is inapposite, for neither the adult pretrial detainee nor the detained minor can be punished at all. This does not mean, however, that "every disability imposed during . . . detention amounts to 'punishment' in the constitutional sense." (*Bell, supra* at 1873)

The test of *Bell* with regard to whether a condition or practice amounts to punishment and therefore is proscribed, whether it be cruel and/or unusual, is "whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." (*Bell, supra* at 1873) Absent a showing of an express intent to punish on the part of detention facility officials, that determination generally will turn on "[w]hether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]" (*Bell, supra* at 1873-4).

## IV
## OVERCROWDING

The overcrowding and short-term temporary housing of juveniles at CJH is remarkably similar to the situation confronting the Supreme Court in *Bell v. Wolfish*. Within a short time of the opening of the federal MCC facility under consideration in *Bell*, the facility exceeded its planned capacity of 449 inmates by over 70 inmates (over 15%) (*Bell, supra*, 1867 & n. 4).

> "To provide sleeping space for this increased population, the MCC replaced the single bunks in many of the individual rooms and dormitories with double bunks. Also, each week some newly arrived inmates

had to sleep on cots in the common areas until they could be transferred to residential rooms as space became available." (*Bell, supra* at 1867. Footnote Omitted).

The Supreme Court observed that the overcrowding, caused by an unprecedented "rise in the number of persons committed to pretrial detention" (*Bell, supra* at 1867) did not constitute "punishment" (*Bell, supra* at 1875). Likewise, the unprecedented rise in the number of juveniles required to be housed at CJH as a result of the catastrophic earthquake and the efforts taken by the Probation Department to deal with it, should likewise preclude a conclusion that it constituted "punishment" in the constitutional sense.

The Court further observed that confining two people in the 75 square foot rooms, remarkably similar in size to the 70 square foot rooms at CJH, during sleeping hours, as was the case at CJH, did not amount to a violation of the Due Process rights of pretrial detainees (*Bell, supra* at 1875). Rejecting the reasoning of the District Court in the *Bell* case, that the design capacity defined the upper limit of constitutional capacity and that the "double bunking constituted a 'fundamental denial of decency, privacy, personal security, and simply civilized humanity. . . .' " (*id.*), the High Court concluded that confining detainees in such make shift quarters "for generally a maximum period of 60 days [does not violate] . . . the Constitution"[14]

Although Appellants utilized a somewhat different mode of dealing with the overcrowding, preferring the temporary use of other vacant rooms and sleeping areas in the day

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[14]The Court in Bell at note 27 here rejects the reliance of some lower courts on various minimum square footage requirements and on correctional standards promulgated by various groups and agencies as a basis for establishing the minimum amount of living space required by the Constitution.

rooms to "double bunking" the juveniles, their actions are equally defensible under the holding in *Bell*. There is "a wide range of 'judgment calls' that meet constitutional and statutory requirements" and the choice between them is "confided to officials outside of the Judicial Branch of Government." (*Bell, supra* at 1886). The "double bunking" choice is, perhaps, more appropriate at a facility such as the MCC where the overcrowding and "double bunking" lasted for relatively long consecutive periods of up to 60 days (*cf. Bell, supra* at 1876) for those so housed, and makeshift corridor housing only for brief periods for newly arrived inmates.

At CJH where the overcapacity was generally of one or two days[15] duration, the decision to house the newly arrived juveniles briefly in vacant infirmary or ICU rooms or in makeshift quarters in dayrooms until they could be moved into regular residential units as space became available, is rationally supportable as an appropriate means of disrupting the fewest number of juveniles with minimal dislocation before more permanent quarters were obtained.

Moreover, if this alternative mode chosen by Appellants is rejected, the District Court's order is still inappropriate as being too broad. For its terms preclude any mode of detaining juveniles at CJH in excess of its rated capacity, no matter how short the period of such temporary quarters or the chosen mode of dealing with it.

The fact that the former overcrowding is now solved because of the newly built additional facilities and other factors, and that Appellants now have the ability to comply with the Court's order without difficulty is of no consequence to their ability to challenge the legality of the order.

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[15]See fn. 6, *supra*.

(*See Bell, supra,* 1876 at n. 25). Appellants "still dispute the legality of the court's order" and might be required to deal with the overcrowding again in the future. (*id.*)

The State has vested the authority to promulgate and enforce standards for juvenile facilities in the California Youth Authority, and has armed that agency with powerful enforcement mechanisms whereby a facility automatically can no longer be used if deficiencies which render the facility unsuitable for the detention of juveniles are not corrected within 60 days. (Welf. & Inst. C. §209). The State agency had clearly assumed that jurisdiction at CJH with regard to the problem of overcrowding, was monitoring it closely (Gillen Affidavit; Judge Gadbois Affidavit), and had promulgated a specific method of determining when that overcrowding reached an unacceptable level and must be stopped.[16] The Court's order is inconsistent with and usurps that authority and jurisdiction legally vested in the California Youth Authority and in the presiding judge of the local juvenile court. (*See* Fitzgerald Affidavit; Judge Gadbois Affidavit; Judge Byrne Affidavit.) As such it violates the appropriate separation of powers between the judicial and executive branches of government with regard to conditions of confinement (*Bell, supra* at 1879). The Supreme Court's decision in *Bell v. Wolfish* and its previous "decisions have time and again emphasized that this sort of unguided substitution of judicial judgment for that of the expert . . . administrators on matters such as this is inappropriate" (*Bell, supra* at 1882).

## V
## LAVATORIES

To add toilet facilities to all rooms is a major construction project requiring considerable time, disruption, and expenditures. The Court's alternative of leaving the rooms open

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[16]*See* note 8 and text, *supra.*

at night creates unreasonable risks of harm to juveniles and staff, and creates unacceptable security risks.[17]

Under the current system all a juvenile must do to gain access to a toilet when he is locked in his room is to knock on the door and have a staff member, who is on duty at all times, give him access to toilet facilities.

The problems of escapes and assaults on staff and minors are very real concerns at a facility such as CJH. Although the persons confined there are juveniles, the population is highly transient, with considerable prior detention and criminal history, and contains many hostile, volatile youths to whom violence is no stranger.[18]

There were 183 escapes from County detention facilities in a year period 1974-75, 75 of which were from CJH (Exhibit KN). Assaults on staff by juveniles resulted in serious injuries to 78 staff members in 1975 (Exhibit KN).

The freedom of movement, and number of unlocked doors and windows, particularly at nighttime have been cited as the primary cause of inadequate security at CJH (Exhibit KN). The Court's alternative of leaving the juvenile's room open at nighttime could not help but compound this problem.

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[17]The California Youth Authority states that the "primary function of a juvenile hall is to provide secure physical care" and that "buildings must be planned accordingly" (Exh. HR, p. 9) *See* note 13, *supra*. The Youth Authority clearly contemplates secured locked sleeping rooms. The 1973 standards provide: "Heavy locks are recommended for security areas, but the key slot of a sleeping room door should not be accessible from inside the room." (Exh. HR, p. 8)

[18]*See* Exhibits AM, Z. Probation Department statistics for 1974 indicate that 41% of the juveniles detained were detained for crimes against persons; 37.6% for crimes against property. An analysis of the male population at CJH on June 8, 1976, reveals that over 11% were either currently detained or had a prior detention on a homicide charge (Exhibit AM). An additional 24% were either presently detained or had a prior detention for assault, battery, mayhem, rape or kidnapping (*id.*). Almost 42% were either presently detained or had a prior detention for burglary (*id.*). The male juveniles had an average of 2.8 prior detentions each, and an average of 1.24 prior felony detentions each (*id.*).

If all doors were unlocked, there would be nothing to prevent juveniles from leaving their rooms to initiate, join in or interfere with incidents that might occur. It is not difficult to imagine the ease with which a group of juveniles on a planned basis could jointly surprise and overcome a staff member. A juvenile could not be locked in his room for temporary security which would inhibit the staff from effectively protecting others, and in cases of riot or emergency, it would not be possible to isolate the juveniles involved.

The detriment to the juveniles is small compared to the security risks that would be caused by leaving the rooms unlocked. The only significant detriment to the juveniles is that they must knock on the doors and have a staff member give them access to a toilet, should the need arise during the night.

The evidence did not indicate that minors have any significant difficulty in gaining access to toilet facilities. Although many minors testified, none of them indicated that they personally had any difficulty gaining access to a lavatory when they needed to. Only two testified that they had heard or seen evidence of others having such difficulty;[19] although these two juveniles (Mulligan and Tyrer) testified that they heard others urinate out the window and claim to have cleaned up stains caused by such activity, it is possible that the alleged stains were caused by juveniles purposely urinating out the windows without attempting to gain access

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[19]Although a pattern of refusal to grant access to lavatories might constitute punishment and therefore be invalid, no such pattern was proved in this case. (*Cf. Spain v. Procunier* (9th Cir. 1976) 408 F.Supp. 534, 546). Moreover, such abuse, even if established, should not be the basis for enjoining the entire procedure. (*Cf. Bell, supra*, 1883-4 at n. 38; but rather is more appropriate for an individual damage action. (*id.*)

to the toilets. If the access to the toilets was a significant and substantial problem to a sufficient number of juveniles, one would reasonably have expected at least one of the many juveniles called would have testified that he personally had difficulty in this regard.

Moreover, there are procedures designed to minimize the potential for abuse. During the night hours, staff is on duty at all times. The night staff is required to check each room every half hour and to keep a record of such inspections, which is reviewed by the central Movement and Control staff, and to regularly report to the central Movement and Control staff (Exh. DS, CJH Manual, §103.02, p. 10, Para. III(j). *Cf.* Jackson Deposition 97). During the daytime, the evidence is virtually uncontradicated that juveniles have access to toilets almost anytime they desire, just by asking (*cf.* Kory Deposition, 67:14-17; Hudson Deposition, 58; Rodriguez Deposition, 54-55; Deveraux Deposition, 46-47).

There is no evidence to support a conclusion that the design of the facility with locked rooms and without individual toilets, or the procedures for access to toilets was done for punishment in the constitutional sense. Given the physical arrangement of the facility,[20] the procedures are

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[20]Although the 1973 standards for juvenile halls (Exh. HR) provides that locked individual rooms "should be equipped with a . . . toilet" (Exh. HR, p. 11), the standards also provide "an existing juvenile hall, built in accordance with construction standards in effect at the time of construction, shall be considered as being in compliance with minimum standards, unless the condition of the structure is determined to be dangerous to life, health, or welfare" (Exh. HR, p. 9 at note*). Prior to 1973 the standards did not require toilets in sleeping rooms (*See* Exh. FC). There is no evidence in the record that the arrangement at CJH, all of which was built prior to 1973, has been deemed by the agencies charged with promulgating and enforcing these standards to be dangerous to the life, health and welfare of the juveniles. If so deemed, the self executing provisions of Welf. & Inst. C. §209 would preclude the use of CJH unless the deficiencies were corrected within 60 days.

clearly rationally related to ligitimate security and custodial concerns. The procedure is not so harsh that it compels a conclusion of punitive intent. (*Cf. Bell, supra,* 1874 at n. 20)

While the installation of toilets in the rooms would understandably further a juvenile's desire to live as comfortably as possible, that desire does not rise to constitutional proportions. (*Bell, supra* at 1871). Moreover, proper deference to the expertise and discretion of custodial officials demands that they and not the courts make the difficult judgments reconciling the safety of inmates and staff, the security of the facility and the rights and interests of inmates. (*Bell, supra,* 1883-4 at n. 38).

## VI
## SHOWERS

The Court's order requiring each shower to be equipped with a privacy screen and individual controls is not specifically required by the Federal or State Constitution, or State statute or provision. The system in use at CJH is similar to the systems in use in many schools and colleges.

Lack of privacy is inherent in detention, and the Supreme Court has held that requiring detainees to utilize toilets in the presence of others does not violate their constitutional rights. (*Bell, supra* at 1876). So-called invasions of detainees' privacy may be justified by legitimate custodial objectives. (*Bell, supra* at 1875-6).

Any doubt about whether the showering procedures are of such moment to come within the general statutory goals of providing secure confinement "as nearly like a home as possible" (Welf. & Inst. C. §851) or "care, custody and discipline" as nearly as possible equivalent to that which should be given by his parents" (Welf. & Inst. C. §202, formerly §502), should be resolved consistently with the

apparent approval of the State agencies charged with interpreting and enforcing those general statutory goals (*see, supra*). These agencies have not found that the shower procedures and facilities render CJH an unsuitable place for the detention of juveniles under the statutory scheme.[21]

There is no evidence to suggest that the showers were designed for the purposes of punishment or that the showering arrangements are so harsh that a conclusion of punitive intent is compelled. (*Cf. Bell v. Wolfish, supra* 1874 at n. 20)

There is a rational relationship between the shower procedures and legitimate custodial objectives. The centralized flow and temperature controls minimize the potential for altercations concerning the shower controls or for a juvenile deliberately or mistakenly injuring himself or others by scalding, and facilitate the efficient and orderly conduct of the showering process. The open fronts of the shower stall facilitate supervision.

Although the existing facilities and procedures to some extent interfere with a juvenile's privacy and with his understandable desire to live as comfortably as possible, the interference is minimal. The procedures are rationally related to legitimate custodial concerns, and replumbing and rebuilding of the existing shower facilities would be required to comply with the Court's order. Applying the standard of *Bell*, the reconciliation of these conflicting concerns is more properly made by the facility administrators. (*Bell, supra*, 1883-4 at n. 38)

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[21]*Bell v. Wolfish* tells us quite clearly, that it is these agencies and not the Judicial Branch, who have the responsibility of determining the appropriate accommodation of the conflicting interests affecting conditions of detention which do not arise to constitutional proportions. (*Bell, supra*, 1883-4 at n. 38).

## VII
## MEDICAL CARE

The evidence regarding medical care was presented and considered in a rather convoluted manner, reflective of the considerable changes in the health care delivery system at Central Juvenile Hall before, during and after trial.

In March of 1975 (Exhibit FZ, 3/17/75 Memorandum from Swancutt to Pederson) (prior to the filing of the present action — September 1975) the Probation Department requested and the Board of Supervisors ordered (Exhibits FX, 11/75 CAO Report To Board; FY, 11/26/75 CAO Letter to Board; GD, 12/23/75 Minutes, Board of Supervisors) the convening of a Task Force, made up of in-house and independent doctors, nurses, hospital administrators and custodial personnel to evaluate the health care system at Central Juvenile Hall and recommend ways to improve it. This Task Force completed its evaluation and made extensive recommendations in April of 1976 (Exhibit HI, 4/8/76 Task Force Report), about midway between the time the action was filed and when it was tried. On May 11, 1976, about one month after the Task Force recommendations were made and several months before trial, the County's Board of Supervisors approved all of the Task Force recommendations and instructed the affected County departments to implement them. (Exhibit HI, Attachment to Task Force Report). While implementation of the Task Force recommendations had begun, it was not fully implemented by the time of trial (Exhibits HF, 7/1/76 Letter from Witherill to Board; HG, 7/7/76 Letter from CAO to Board; KH 9/20/76 Probation Department Memorandum; Affeldt, RT: 1125-1134; Dwoskin, RT: 1024; Broady, RT: 1072-1091; Expert Statement of Wherle; Exhibits IK 4/26/76 Broady Memorandum; HT 6/11/76 Equipment List).

Understandably, the comprehensive Task Force Report formed the nucleus of the trial on the medical issues. In fact, some of Appellee's primary proferred medical experts were members of the Task Force (Exhibit HI, Task Force Report). The medical portion of the trial, in large part, focused on whether the Task Force's recommendations were constitutional minima or desirable but not constitutionally mandated, and with the mode and timing of its implementation. Appellants contended that while the recommendations were being implemented, they were not constitutionally required, and even the former health care system, although not the most desirable, was at least constitutionally sufficient.

The record upon which the Court's decision was based is further complicated by the rather unusual period of time the Court kept the matter under submission, compounded by the fact that considerable change in the health care system was occurring as the Task Force recommendations were continually being implemented. During this period, the Court solicited a number of status reports updating the changes in the health care system. The final order was issued over two years after the trial without any trial to resolve the conflict between the Appellants' and Appellees' status reports.

## A. MEDICAL ADMISSIONS SCREENING AND PHYSICAL EXAMINATIONS

The District Court's order contemplates a health care system where juveniles receive two separate medical examinations, one prior to admission to the facility (4-12-79 Order, para. 3(a)), and a second one within 48 hours of that admission (4-12-79 Order, para. 3(b)). These two examinations parallel the existing system and differ primarily in scope and timing.

i. Initial Medical Admissions Screening

The current medical admissions screening is designed to detect serious medical conditions which "may be of immediate concern to the child or the rest of the population" (Defendants Response to Plaintiffs Proposed Judgment, p. 24). To accomplish this, a registered nurse sees every juvenile upon his admission to Central Juvenile Hall (Proposed Findings, para. 18, 19; Broady, RT: 1082; Defendants Status Report, p. 9). This nurse performs a visual inspection, checks pulse, temperature, vision, blood pressure, administers a venereal and tuberculin skin test, asks questions designed to elicit the existence of any serious medical problems and opens a medical record on the juvenile. (Exhibit FX, CAO Report to Board 11-75; Defendants Response to Plaintiffs' Proposed Judgment, p. 24). If the juvenile is in need of medical treatment or answers positively to any of the medical questions, he is sent to the infirmary to be examined by a licensed physician. (Exhibits FX, CAO Report to Board 11-75; FW, letter dated 12-29-75 from CAO; IW, Memorandum 4-11-75 from Rogers to Pederson; JD, chart re Health Services Division, 10-31-75; FZ, Memorandum 3-17-75 from Swancutt to Pederson; FS, Protocols; Broady, RT: 1079-1081).

The Court's order requires this initial screening to be expanded to include a complete medical history and additional laboratory tests for anemia, sickle cell disease, gonorrhea, and hepatitis (4-12-79 Order, para. 3(a)). Although such a screening might be ideal, the order is time consuming, expensive and medically unnecessary for most juveniles at this point in time. This is particularly true in light of the fact that the juveniles staying at Central Juvenile Hall will shortly receive a physical examination by a licensed doctor. (Proposed Findings, para. 26; Broady, RT: 1087).

The order is further inappropriate in that it misconstrues the purpose of this initial pre-admission examination which is to detect serious and immediate threats to the juvenile or the general population which cannot await the complete physical examination. Such a screening process is not designed to provide elective or preventive medical care. Appellants have no authority to provide such care for the minor prior to the detention hearing and the minor cannot give it himself (Welfare & Institutions Code §739). Medical consent is not obtained until after the juvenile's detention hearing which occurs within three days of his arrest and admission to the facility.

ii. Follow-Up Physical Examination

After a juvenile is ordered detained at Central Juvenile Hall by the juvenile court, which also gives medical consent, (within three court days of his admission, Welf. & Inst. C. §631), he receives a physical examination by a licensed doctor (Proposed Findings para. 26; Broady, RT: 1087).

At this physical examination, a licensed doctor (pediatricians work full time at CJH) reviews medical records from previous detentions, takes a medical history from the juvenile, reviews and updates the juvenile's immunization status, reviews laboratory test results and initiates appropriate follow-up, physically examines the juvenile and orders whatever medical care and treatment he feels is indicated by the juvenile's condition; all of which is entered on the juvenile's medical record. (Proposed Findings, para. 26; Broady, RT: 1087; Defendants Response to Plaintiffs Proposed Judgment, p. 30)

Appellees have acknowledged that the facilities and personnel available to perform these physical examinations are satisfactory (Plaintiff Status Report, para. III G). The issue with regard to the court's order on physical exami-

nations is the requirement that this examination be done within 48 hours of admission and all juveniles be provided additional laboratory tests such as gonorrhea, sickle cell anemia and hepatitis.

The 48-hour requirement is inappropriate and in conflict with state law and Appellants contend that additional laboratory tests would be medically inappropriate for *all* juveniles unless symptoms are identified during the physical examination which indicate such tests should be ordered.

A sickle cell test would only be medically appropriate for black juveniles whose medical history (taken by the qualified physician during the examination) indicates a genetic history of the disease. The test for gonorrhea for males who do not exhibit symptoms is painful and embarrassing in that it requires the insertion of a probe into the penis (Broady RT:1081). As only about 1.9% of these asymptomatic males test positive, routine screening is not medically recommended (Defendant Status Report, Dr. Baker, p. 10). Anemia and hepatitis tests are currently performed for all juveniles who, in the opinion of the qualified doctors, exhibit symptoms warranting them.

This portion of the Court's order regarding physical examinations, when reduced to its basics, merely involves a difference of medical opinion. Appellees acknowledge that the physicians conducting the examinations are qualified; therefore, it stands to reason they should be the ones deciding what laboratory tests to run and on whom.

B. SICK CALL

Sick call is conducted by licensed registered nurses three to four times daily. (Proposed Findings, para. 31) The nurses go to the juveniles' living units and either treat their minor complaints or send them to a doctor at the Physician's Ambulatory Care Clinic which is held three times daily. (De-

fendants Status Report: Baker, 12-14; Exhibits KH, 9-20-76 Probation Department Memorandum; FX, 11-25-75, CAO Report to Board)

The order regarding sick call (4-12-79 Order, para. 3(c)) requires a system virtually identical with the above and differs only in some aspects of its implementation.

The order requires the medical records for each juvenile who is to be seen be taken with the nurse. As over 200 juveniles are seen at these sick calls daily (Defendants Status Report: Baker, 12; Exhibit FX, 11-25-75 CAO Report to Board), it would be time consuming, expensive, impractical, and medically unnecessary to take such records with the nurse.

In order to know which juveniles' records to take, the juveniles would have to indicate their desire to go to sick call sufficiently in advance in order to allow time to pull the records. No such waiting time currently is required. (Defendants Status Report: Baker 12) In lieu of carrying such records with her, current practice is for the nurse to record the name of every juvenile she sees, the nature of the complaint and the treatment given; such information being transferred to the juvenile's medical record at the conclusion of her rounds (Defendants Status Report: Baker 14).

Moreover, if the nurse had the medical record in her possession, the juveniles with medical complaints who are sent to the Physician's Ambulatory Care Clinic would not have medical records available to be reviewed by the physician who is examining them.

The order further requires sick call not be conducted in front of non-medical persons (4-12-79 Order, para. 3(c)(i)). Current practice is for counseling personnel to be present when the juvenile talks with the nurse (Proposed Findings,

para. 35). The reason for this is to provide security and to identify the juvenile for the nurse. (Defendants Status Report: Baker 15) (*cf.* 4-12-79 Order, para. 3(0) requiring a procedure to identify each juvenile to whom medication is given). Moreover, if there is any reluctance on the part of the juvenile to express or discuss a medical problem, the nurse will take the minor aside or else send him to the Physician's Ambulatory Care Clinic where privacy is available. (*id.* at p. 13)

Paragraph 3(c)(ii) of the Court's order requires implementation of sign-up procedures for juveniles wanting to go to sick call and prohibits counselors from denying any minor the right to attend.

Counselors at Central Juvenile Hall stand *in loco parentis* with the juveniles ordered detained by the juvenile court (Welf. & Inst. C. §§636, 739). As such, the "counselors do make some evaluation, much as a parent would do, as to whether the juvenile needs to see a health care provider at that minute or whether the juvenile can wait until the nurse makes rounds which, for the most part, would be within a few hours." (Defendants Status Report: Baker p. 12) Over half of the population at Central Juvenile Hall regularly attends sick call on a given day under the current system. (Defendants Status Report: Baker 12; Exhibit FX, 11-25-75 CAO Report to Board, p. 18) If counselors were routinely denying juveniles the right to attend sick call, this figure would of necessity be much lower.

Requiring a juvenile to sign an attendance sheet as opposed to telling his counselor he wishes to go to sick call is merely a difference of opinion regarding the carrying out of a sick call.

## C. ADMINISTRATION OF THE HEALTH CARE SYSTEM

The majority of the remaining portions of the District Court order involve aspects which can be catagorized as administrative. (4-12-79 Order, paras. 3(e), (f), (h), (l), (m), (n), (o), (s), (v), and (w)).

Appellees acknowledge that the above administrative aspects of the health care system have been taken over by the County Department of Health Services in affiliation with the University of Southern California School of Medicine and that the current administrators are qualified and competent to do the jobs required of them. (Plaintiff's Status Report, p. 8) Appellees' expert stated that significant gains have been made in the administrative organization of the medical care program. (Plaintiff's Status Report, p. 18)

Procedures for each of the above aspects of the Court Order currently, and at the time of trial, exist. (Exhibits KH, 9-20-76 Probation Department Memorandum; HS, 6-15-76 Thorazine Study; HT, 6-11-76 Canin Equipment List; JB, 2-11-76 Medical Standing Orders; GW, 2-13-76 Medical Standing Orders; KE, 9-3-76 Nursing Protocols; IK, 4-26-76 Broady Memorandum; Defendant's Status Report: Dr. Baker: 15, 16, 17; Plaintiff's Status Report: 7, 8, 9, 13)

In preparing her status report for the court, Appellee's Expert, Dr. Litt, reviewed Appellants' current procedures for the above matters and in general found all to be satisfactory (Plaintiff's Status Report: Litt, pp. 13-19) At most, the order regarding policies and procedures and general administrative matters devolves into a difference of medical opinion as to what is best. As admittedly qualified personnel run the system (Plaintiffs' Status Report, para. IIIA), they should make the decisions in this area.

D. EQUIPMENT AND SUPPLIES

In the Los Angeles County Task Force report (Exhibit HI, 4/8/76), note was made of a lack of certain medical equipment in Central Juvenile Hall. On May 11, 1976 the County Board of Supervisors adopted the Task Force Report and ordered its implementation. (Exhibit HI, 4-8-79 Task Force Report) Thirty days later, a detailed list of equipment and supplies was prepared and requisitioned. (Exhibit HT, 1-11-76 Equipment List) The list was prepared by the Probation Department upon the recommendations and with the assistance of the Department of Health Services (Exhibit HF, 7/1/76 Letter from Witherill to Board). On July 7, 1976 the Board of Supervisors was notified that the medical equipment and supplies recommended had been ordered at a cost of over $8,000. (Exhibit HG; 7-7-76 CAO Letter to Board) At the time of trial, much of the ordered equipment had already been received (Exhibit KH (8), (41), (43) 9-20-76 Probation Department Memorandum). Medical journals and resource literature were obtained and in use (*id.* (6)). Emergency equipment was upgraded and two complete crash carts (self-contained resuscitation units) were on order (*id.* (43); Exhibit HT, 6-11-76 Equipment List). Contracts were let with private commercial laboratories and nearby hospitals to provide laboratory tests and services which could not be done at CJH. (Exhibit KH (30) 9-20-76 Probation Department Memorandum; Broady, RT: 1100-1101; Dwoskin, RT: 1058)

The Court's order regarding additional equipment and supplies is one based upon a difference of medical opinion and is an expression of desirability and not constitutionality.

E. COMMUNICATIONS SYSTEM.

Paragraph 3(g) of the District Court's order requires the installation of a communications system whereby juveniles in the infirmary can summon nursing or counseling personnel.

Appellants recognize the desirability of having such a communications system installed. However, CJH is 50 years old and when constructed, such a communications system was not available. To compensate for its absence, infirmary personnel make frequent rounds and visually check on each juvenile's status. (Exhibits KH (50), 9-20-76 Probation Department Memorandum; IH, Chart-Infirmary Rounds Check Record; IJ, Chart — 24-hour Nursing Report; IB, Memorandum from Striano to Dwoskin) Significantly, no juvenile was shown to have suffered a serious medical injury or illness as a result of the failure to have such system.

To construct such a system in the present facility would cost thousands of dollars and require six months to a year to complete. While this might be desirable, it is not constitutionally required.

F. PSYCHIATRIC CARE

Psychiatric care is provided to juveniles through a staff of 72 consulting psychiatrists, seven psychologists and attendant psychiatric social workers and mental health personnel with a budget of over $700,000. (Exhibit KH, 9-20-76 Probation Department Memorandum; FX, 11-75 CAO Report to Board; HU, 1-76 Probation Department Organizational Chart; Exhibit 457, 2-17-76 Bolton Report p. 115) Juveniles whose behavior or demeanor indicate the need for psychiatric care are referred for evaluation and treatment by the medical and mental health personnel which are available 24 hours a day, seven days a week at CJH. (Exhibits KH, 9-20-76 Probation Department Memorandum; FN, 1-30-76 Probation Department Directive Re: Mentally Disordered Wards; FX, 11-75 CAO Report to Board p. 7; Defendants Status Report: Baker p. 9; Plaintiffs Status Report: Litt p. 17; Defendants Response to Plaintiffs Proposed Judgment p. 64) Juveniles with serious mental health prob-

lems are transferred from CJH to approved mental health facilities, such as the Psychiatric Hospital at Los Angeles County/USC Medical Center, for appropriate treatment. (Exhibits FN, 1-30-76 Probation Director Re: Mentally Disordered Wards; Defendants Response to Plaintiffs Proposed Judgment p. 64)

As with medical care, mental health care is under the administration of the Department of Health Services, in affiliation with the University of Southern California School of Medicine, whose personnel are qualified to run the system. (Plaintiffs Status Report, para. IIA; Defendants Status Report: Baker p. 6; Exhibit 457, 2-17-76, Bolton Report pp. 139-140)

The District Court's order (para. 4(a)) contemplates mental health services which parallel the existing system and merely expands the scope of the services provided. To implement the Court's order would be expensive, inefficient and medically unnecessary for most juveniles.

Having a minimum of three psychiatrists or psychologists on duty at Central Juvenile Hall at all times during evening hours would be ideal. However, to do so would require some of the existing ones to shift their schedules from day to night, thus resulting in a poor utilization of mental health expertise and a reduction in the availability of mental health care during the day. Rarely are psychiatric services needed during the night (Dwoskin, RT: 1035; Broady, RT: ); and if they are needed, the nearby psychiatric hospital and on-call mental health personnel can provide them. (Defendants Response to Plaintiffs Proposed Judgment p. 64; Defendants Status Report, Baker: p. 9)

The Court's order is based upon a difference of medical opinion and deals with desirability and not constitutionality.

The qualified health care providers currently at Central Juvenile Hall should be allowed to use their expertise in this area.

G. MISCELLANEOUS MEDICAL PROVISIONS

The balance of District Court's order dealt with medical records (4-12-79 Order, para. 3(k)(i-iv); the sanitation and hygiene of the facility (para. 3(d), (i), (j)); and special medical diets (para. 3(p)(i-iii).

Sanitation, hygiene and medical diets are acknowledged by Appellees to be no longer in issue (Plaintiffs Status Report pp. 3-5). The medical records system is acknowledged by plaintiffs' expert to be excellent (Plaintiff Status Report p. 16). The only area of disagreement is over staffing to fully operate the records system.

The current Medical Director testified that his budget includes such medical records personnel, and that they are actively recruiting such people (Defendants Status Report p. 14). Current medical records staff includes a Medical Records Director and 10 attendant personnel (Exhibit HY, Organizational Chart — Probation Medical Services, Defendants Status Report p. 14).

As the issue of what a sufficient number of personnel are required to run a medical records system is peculiarly within the expertise of medical administrators, the admittedly qualified current administrators (Plaintiffs Status Report, para. IIIA) will properly exercise this expertise.

CONCLUSION

For the foregoing reasons, the District Court's Order of 4-12-79 should be reversed and vacated. To the extent that portions of the order are not reversed, they should be vacated and remanded to the District Court with instructions to reconsider them in light of the standards of review promul-

gated by the Supreme Court in *Bell v. Wolfish, supra*. In the event portions of the order are upheld, the provisions of the order requiring full implementation of the order within 60 days or that CJH be no longer used should be vacated and remanded to the District Court with instructions to provide a more reasonable time for implementations.

Dated: August 3, 1979

Respectfully submitted,

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